



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet on Monday, December 9, 2024 at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda – 1063 [Online agenda updated as needed](#)

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

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

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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



Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
MONDAY, December 9, 2024 at 1 p.m.
Annex Room 149



1. CALL TO ORDER AND ROLL CALL

2. REGULATIONS FOR COMMITTEE REVIEW

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; "E" expires 1-25-2025) (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; "E" expires 1-25-2025) (Deferred from August)

Aerospace

013 KAR 006:010. Aviation training scholarships. (Deferred from November)

013 KAR 006:020. Aviation equipment grants. (Deferred from November)

STATE BOARD OF ELECTIONS

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031 KAR 004:230. Post-election audit procedures.

PERSONNEL CABINET

Office of the Secretary

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101 KAR 002:210. 2025 plan year handbook for the Public Employee Health Insurance Program. (Filed with Emergency; "E" expires 06-10-2025)

101 KAR 002:210E. 2024 and 2025 Plan year handbooks for the Public Employee Health Insurance Program. (Filed with Ordinary) ("E" expires 06-10-2025) (Deferred from November)

FINANCE AND ADMINISTRATION CABINET

Teachers' Retirement System

102 KAR 001:380. Qualified domestic relations orders for TRS 4 members.

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. (Amended After Comments) (Deferred from November)

201 KAR 002:465. Non-Resident Pharmacy Applications and Waivers. (Amended After Comments) (Deferred from September)

Board of Optometric Examiners

201 KAR 005:005. Fines and fees.

201 KAR 005:010. Application for licensure; endorsement.

201 KAR 005:090. Annual renewal fee.

Board of Dentistry

201 KAR 008:610. Dental community health workers. (Amended After Comments)

Board of Embalmers and Funeral Directors

201 KAR 015:030. Fees.

201 KAR 015:050. Apprenticeship and supervision requirements.

201 KAR 015:110. Funeral establishment criteria.

201 KAR 015:120. Requirements for applicants holding a license in another state.

201 KAR 015:125. Surface transportation permit.

Board of Veterinary Examiners

201 KAR 016:520. Approved veterinary medical programs for veterinarians; approved veterinary technology programs for veterinary technicians.

201 KAR 016:530. Examination requirements for veterinarians and veterinary technicians.

201 KAR 016:562. Duties and responsibilities of an animal euthanasia specialist.

201 KAR 016:590. Continuing education requirements, veterinarians and veterinary technicians.

201 KAR 016:612. Notice to Comply (NOC) and Notice of Violation (NOV)

201 KAR 016:614. Fines.

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Board of Medical Imaging and Radiation Therapy

- 201 KAR 046:035. Practice standards, scopes of practice, and ethical standards.
- 201 KAR 046:040. Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist licenses.
- 201 KAR 046:060. Continuing education requirements.
- 201 KAR 046:100. Medical Imaging and Radiation Therapy Scholarship and Continuing Education Fund.

INDEPENDENT ADMINISTRATIVE BODIES

Board of Emergency Medical Services

- 202 KAR 007:201. Emergency medical responders. (Filed with Emergency)
- 202 KAR 007:301. Emergency medical technician. (Filed with Emergency)
- 202 KAR 007:330. Advanced emergency medical technician. (Filed with Emergency)
- 202 KAR 007:401. Paramedics. (Filed with Emergency)
- 202 KAR 007:545. License classifications. (Filed with Emergency)
- 202 KAR 007:560. Ground vehicle staff. (Filed with Emergency)
- 202 KAR 007:596. Mobile integrated healthcare licensure.

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Hunting and Fishing

- 301 KAR 003:005. Public use of newly acquired or newly managed lands.

ENERGY AND ENVIRONMENT CABINET

Department of Environmental Protection

Solid Waste Facilities

- 401 KAR 047:110. Registered permit-by-rule.

Standards for Solid Waste Facilities

- 401 KAR 048:320. Operating requirements for less than one (1) acre or expanded less than two (2) acre construction or demolition debris landfills.

JUSTICE AND PUBLIC SAFETY CABINET

Peace Officer Death Benefits

- 500 KAR 001:010. Definitions for 500 KAR Chapter 1.
- 500 KAR 001:021. Filing and processing of death benefit claims.
- 500 KAR 001:030. Request for hearing.

Department of Corrections

Office of the Secretary

- 501 KAR 006:410. Corrections policies and procedures: inmate life and issues. (Not Amended After Comments) (Deferred from October)

TRANSPORTATION CABINET

Department of Highways

Traffic

- 603 KAR 005:050. Uniform traffic control devices.
- 603 KAR 005:066. Weight (mass) limits for trucks.
- 603 KAR 005:350. Off-highway vehicles, safety, and routes.

EDUCATION AND LABOR CABINET

Office of Learning Programs Development

Office of Instruction

- 704 KAR 003:535. Full-time enrolled online, virtual, and remote learning programs. (Deferred from November)

Office of Unemployment Insurance

Unemployment Insurance

- 787 KAR 001:360. Overpayment waivers.

Department of Workplace Standards

Occupational Safety and Health

- 803 KAR 2:110E. Employer and employee representatives. (Filed with Ordinary) ("E" expires 06-27-2025)

PUBLIC PROTECTION CABINET

Department of Financial Institutions

General

- 808 KAR 015:050. Out-of-State trust companies operating in Kentucky. (Deferred from October)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Communicable Diseases

- 902 KAR 002:020. Reportable disease surveillance.
- 902 KAR 002:040. Syndromic surveillance.

Trauma System

- 902 KAR 028:010. Definitions for 902 KAR Chapter 26.
- 902 KAR 028:020. Kentucky trauma system designation process.

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902 KAR 028:030. Kentucky's trauma system level IV criteria.
902 KAR 028:040. Kentucky's Trauma Registry and Data Bank System.

Kentucky Early Intervention System

902 KAR 030:200. Coverage and payment for services. (Not Amended After Comments)

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)

Hospital Service Coverage and Reimbursement

907 KAR 010:015. Payments for outpatient hospital services. (Deferred from November)

Behavioral Health

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

Department for Community Based Services

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Supplemental Nutrition Assistance Program

921 KAR 003:030. Application process. (Deferred from November)

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922 KAR 001:490. Background checks for foster and adoptive parents and relative and fictive kin caregivers. (Amended After Comments)

Adult Services

922 KAR 005:120. Vulnerable adult maltreatment registry and appeals. (Amended After Comments)

3. REGULATIONS REMOVED FROM DECEMBER'S AGENDA

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

Ad Valorem Tax; Administration

103 KAR 005:200. Valuation of multi-unit rental housing subject to government restriction on use. (Comments Received; SOC ext. due 12-13-2024)

BOARDS AND COMMISSIONS

Board of Nursing

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses. (Comments Received; SOC ext., due 12-13-2024)

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Bond and Insurance Requirements

405 KAR 010:001. Definitions. (Comments Received; SOC ext. due 12-13-2024)

405 KAR 010:015. General bonding provisions. (Comments Received; SOC ext. due 12-13-2024)

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Department of Financial Institutions

Credit Unions

808 KAR 003:050. Conduct of credit unions. (Amended After Comments) (Deferred from November)

Check Cashing

808 KAR 009:010. Deferred deposit database compliance. (Comments Received; SOC due 12-13-2024)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Sanitation

902 KAR 010:120. Kentucky public swimming and bathing facility operations. (Amended After Comments) (Deferred from December)

902 KAR 010:122. Repeal of 902 KAR 010:121 and 902 KAR 010:190. (Deferred from October)

902 KAR 010:123. Kentucky public swimming and bathing facilities construction requirements. (Amended After Comments) (Deferred from December)

902 KAR 010:125. Kentucky public swimming and bathing facility safety requirements. (Amended After Comments) (Deferred from December)

902 KAR 010:127. Kentucky public beach requirements. (Amended After Comments) (Deferred from December)

****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
502 KAR 10:120E.

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)1., 3. to meet an imminent threat to public health, safety, or welfare and an imminent deadline for the promulgation of an administrative regulation established by federal law related a newly increased federal fee. The United States Congress mandates that the Transportation Security Administration (TSA) collect fees to pay for conducting all portions of a Hazardous Materials Endorsement Security Threat Assessment. Under TSA's regulations, states may collect and transmit fingerprints and applicant information to obtain or renew a hazardous materials endorsement and collect fees on behalf of TSA to process the Security Threat Assessment. On August 29, 2024, the TSA published a Notice to the Federal Register announcing changes to the Hazardous Materials Endorsement Security Threat Assessment fee. Effective December 2, 2024, the Security Threat Assessment fee is increasing from \$34.00 to \$57.25 for a standard hazardous material endorsement applicant. This will result in an increase of the total fee collected by the Kentucky State Police (KSP), which includes other fees in addition to the Security Threat Assessment fee, including a Federal Bureau of Investigation (FBI) fee, an information collection fee, and a KSP fee, from \$115.00 to \$138.25. This administrative regulation is being filed on an emergency basis to ensure that Kentucky collects the fee set by the TSA by federal regulation for conducting a security threat assessment. An ordinary administrative regulation is not sufficient because an ordinary regulation could not become effective within the timeframe allotted with the TSA fee increase, which was published in late August of 2024 and becomes effective December 2, 2024. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the new fee is permanent. The companion ordinary administrative regulation is identical to this emergency administrative regulation. An emergency administrative regulation governing a portion of the same subject matter has not been filed within the previous nine months.

ANDY BESHEAR, Governor
KEITH JACKSON, Secretary
COL. PHILLIP BURNETT, JR., Commissioner

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Emergency Amendment)

502 KAR 10:120E. Hazardous materials endorsement requirements.

EFFECTIVE: October 30, 2024

RELATES TO: KRS 281A.120, 281A.130, 281A.150, 281A.160, 281A.170, 49 U.S.C. 5103a, 49 C.F.R. Parts 383, 1515, 1572

STATUTORY AUTHORITY: KRS 281A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate administrative regulations to reasonably carry out the provisions of KRS Chapter 281A. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining or renewing a hazardous materials endorsement for a commercial driver's license. This administrative regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

Section 1. Definitions.

- (1) "CDL" or "Commercial Driver's License" is defined by KRS 281A.010(5) and 49 C.F.R. 383.5.
- (2) "CDL testing location" means the department's regional CDL testing offices.
- (3) "Determination of no security threat" is defined by 49 C.F.R. 1572.15(d)(1).
- (4) "DOT" means the federal Department of Transportation.
- (5) "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(4).
- (6) "HME" means hazardous materials endorsement.
- (7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(2).
- (8) "KSP" means the Kentucky State Police.
- (9) "Proper identification" means:
 - (a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or
 - (b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee, or refugee status.
- (10) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME.

- (1) An applicant applying for a hazardous materials endorsement shall first obtain a commercial driver's instruction permit or CDL prior to requesting a security threat assessment from the TSA. The applicant shall submit application information in accordance with 49 C.F.R. 1572.9. The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.
- (2) To begin the process, an applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.
- (3) An applicant shall bring proper identification, and a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652.
- (4) An applicant shall pay a \$115 fee for a fingerprint-based background check until December 1, 2024. Beginning December 2, 2024, an applicant shall pay a \$138.25 fee for a fingerprint-based background check. The fee may be paid by:
 - (a) Certified check;
 - (b) Cashier's check;
 - (c) Money order; or
 - (d) Electronically before the appointment at https://secure.kentucky.gov/formservices/KSP/hazmat_FP.
- (5) An applicant shall be fingerprinted by KSP at a regional CDL testing location. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the biographical information sheet to the TSA.
- (6) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the applicant shall be notified by the Transportation Cabinet that he or she is eligible to take the knowledge test required to qualify for the HME.
- (7) If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the applicant shall not be issued a HME. The applicant may appeal the TSA's determination in accordance with 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from the TSA in accordance with 49 C.F.R. 1515.7.
- (8) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the

Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications for HME.

(1) The Transportation Cabinet shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.

(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.

(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655. A renewal applicant shall submit to fingerprinting and further complete the "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.

(4) A renewal applicant shall bring to the appointment proper identification, a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027.

(5) A renewal applicant shall pay a \$115 fee for a fingerprint-based background check until December 1, 2024. Beginning December 2, 2024, a renewal applicant shall pay a \$138.25 fee for a fingerprint-based background check. The fee may be paid by:

- (a) Certified check;
- (b) Cashier's check;
- (c) Money order; or

(d) Electronically before the appointment at https://secure.kentucky.gov/formservices/KSP/Hazmat_FP.

(6) A renewal applicant shall be fingerprinted by KSP at a regional CDL testing location. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.

(7) If the Commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the Transportation Cabinet may extend the expiration date of the HME for a period of up to ninety (90) days. Any additional extension shall be approved by TSA.

(8) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified by the Transportation Cabinet that he or she is eligible to take the knowledge test required to qualify for the HME.

(9) If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the renewal applicant shall not be issued a HME. The renewal applicant may appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the renewal applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with 49 C.F.R. 1515.7.

(10) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

(11) An applicant who has received a passing score on the HME test and is applying for a Class C CDL with a hazardous materials endorsement shall drive a Class C placarded vehicle for the skills test.

Section 4. Transfer Applications For HME. (1) In accordance with 49 C.F.R. 1572.13(e), an applicant who applies to transfer an existing HME from another state to the Commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

COL. PHILLIP BURNETT, JR, Commissioner

APPROVED BY AGENCY: October 28, 2024

FILED WITH LRC: October 30, 2024 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 9:00am, at Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Nathan Goens, Staff Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the necessary procedures for conducting fingerprint criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

(b) The necessity of this administrative regulation: This regulation is necessary to carry out the provisions of KRS 281A.040 and the federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 281A.040 and the applicable federal regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in the administration of the statutes by clarifying the statutory authority and the initial application and renewal procedures for a Hazardous Materials Endorsement.

(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 increases the total amount of the fee collected from HME applicants at the time of application.

(b) The necessity of the amendment to this administrative regulation: The increase in the total amount of the fee is necessary because the portion collected by the Transportation Security Administration (TSA) to conduct their Threat Assessment was increased from \$34.00 to \$57.25 per application as published in the Notice to the Federal Register 2024-19412 (89FR 70201) on August 29, 2024.

(c) How the amendment conforms to the content of the authorizing statutes: The federal regulation directs that a state must collect TSA's Threat Assessment fee from the applicant at the time of application.

(d) How the amendment will assist in the effective administration of the statutes: This increase ensures the fee collected by Kentucky State Police on behalf of TSA recovers TSA's costs to process the HME applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, applicants for Hazardous Material Endorsement, Transportation Security Administration.

(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: Kentucky State Police will not be impacted. The TSA will receive the increased fee in compliance with the Notice to the Federal Register. Applicants will pay the increased fee.

(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 to Kentucky State Police. TSA will collect approximately \$54,637 additional fees per year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): TSA will recover the cost of processing HME applications.

(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: Not applicable

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This fee increase is imposed by the Transportation Security Administration. No additional fee or funding is necessary for Kentucky State Police to implement the increased TSA fee.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation directly increases the application fee. The increase is imposed by the Transportation Security Administration and was announced in the Notice to Federal Register 2024-19412 (89FR 70201) on August 29, 2024.

(9) TIERING: Is tiering applied? No. Tiering is not appropriate in this administrative regulation because it applies equally to all those 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 281A.040, 49 U.S.C. 5103a, 49 C.F.R. Parts 383, 1515, 1572

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department of Kentucky State Police

(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? Expenditures, revenues, and cost savings will not be impacted.

(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? Expenditures, revenues, and cost savings will not be impacted.

(4) Identify additional regulated entities not listed in questions (2) or (3): Transportation Security Administration

(a) Estimate the following for the first year:

Expenditures: None

Revenues: \$54,637.50

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The number of applicants determines the impact to revenues for the Transportation Security Administration.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Applicant fees increase by \$23.25. The increase is passed through to the Transportation Security Administration in accordance with 49 C.F.R. 1572.

(b) Methodology and resources used to determine the fiscal impact: The fee increase is directed by federal regulation as announced in the Notice to Federal Register 2024-19412 (89FR 70201) on August 29, 2024.

(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 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 average annual number of applicants for a hazardous materials endorsement the last 24 months, multiplied by the amount of the fee increase is \$54,637.50.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 6 U.S.C. 469, 49 C.F.R. 1503 and 1572

(2) State compliance standards. KRS 281A.040

(3) Minimum or uniform standards contained in the federal mandate. Under 49 U.S.C. 5103a, a state is prohibited from issuing or renewing a hazardous materials endorsement for a commercial driver's license unless the Transportation Security Administration has first determined that the driver does not pose a security threat. To make this security determination, TSA conducts a Standardized Threat Assessment by comparing applicant biographic and biometric information to criminal, immigration, and security databases, and adjudicating any derogatory information against the standards set forth in 49 C.F.R. 1572. TSA is required to recover its vetting program costs through user fees, in accordance with 6 U.S.C. 469. Under TSA's regulations, Kentucky collects and transmits fingerprint and applicant information and fees from applicants for new or renewed hazardous materials endorsements.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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.

NONE

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

PERSONNEL CABINET
(As Amended at ARRS, November 13, 2024)

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(2) requires~~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 may be proper and necessary for its enforcement. This administrative regulation establishes an 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 by the Personnel Cabinet.
- (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 at least~~[no fewer than]~~ five (5) applicants identified in subsection (1) of this section.

Section 3. Restrictions.

- (1) An 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.

FILED WITH LRC: November 13, 2024

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.

FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(As Amended at ARRS, November 13, 2024)

102 KAR 1:320. Qualified domestic relations orders for TRS 1 members, TRS 2 members, and TRS 3 members.

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 for TRS 1 members, TRS 2 members, and TRS 3 members.

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).
- (6) "TRS 1 members" means those individuals whose earliest effective date of membership in the retirement system begins prior to July 1, 2002.
- (7) "TRS 2 members" means those individuals whose earliest effective date of membership in the retirement system begins on or between July 1, 2002 and June 30, 2008.
- (8) "TRS 3 members" means those individuals whose earliest effective date of membership in the retirement system begins on or between July 1, 2008 and December 31, 2021.

Section 2. Applicability, QDRO Information, and TRS Approval. The provisions of this administrative regulation shall apply to a QDRO for TRS 1 members, TRS 2 members, and TRS 3 members.

- (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 for TRS 1 members, TRS 2 members, and TRS 3 members.

(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 Periodic 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.

(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 for TRS 1 members, TRS 2 members, and TRS 3 members 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 by 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;

~~[(b)]~~~~[(e)]~~ The TRS Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number, and date of birth;

~~[(c)]~~~~[(d)]~~ Copies of the participant's and alternate payee's signed Social Security cards;

~~[(d)]~~~~[(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

~~[(e)]~~~~[(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 by 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 by 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. **TRS Benefits Subject to a QDRO.** A QDRO may apply to a participant's:

- (1) Retirement allowance;
- (2) Disability retirement allowance; or
- (3) Termination refund.

Section 5. **TRS Benefits Not Subject to a QDRO.** 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. **Effect of Alternate Payee's Death on QDRO Under the terms of the QDRO.** 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. **TRS Costs and Legal Fees.** 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 **for TRS 1 members, TRS 2 members, and TRS 3 members**", **November 2024**~~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 **Periodic** 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.

FILED WITH LRC: November 13, 2024

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.

**FINANCE AND ADMINISTRATION CABINET
State Investment Commission
(As Amended at ARRS, November 13, 2024)**

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; ~~and;~~

(b) Allow ~~internal~~~~[inter-pool]~~ 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 as established in this section~~;~~

(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 the 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 a commission approved~~[an]~~ 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~~~~[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.

(4) Asset-backed securities (ABS) rated in the highest category by a commission approved~~[an]~~ 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 a commission approved~~[an]~~ 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 a commission approved~~[an]~~ 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 a commission approved~~[an]~~ 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 a commission approved~~[an]~~ 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, 2009, 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.

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(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)

1. The weighted average maturity, adjusted for interest rate resets and demand features, shall not exceed sixty (60) days; and

2. 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 a ~~commission approved~~~~[an]~~ 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.

~~[(f)]~~~~[(h)]~~ The shadow net asset value using the market value of pool holdings shall be computed at least~~[no less than]~~ monthly and made public within sixty (60) days of the calculation date.

~~[(g)]~~~~[(i)]~~ Stress testing of the pool based on redemption and changes in market value shall be performed at least~~[no less than]~~ quarterly and reported to the commission.

~~[(h)]~~~~[(j)]~~ Monthly portfolio listings shall be published to a public Web site and shall remain available for at least~~[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.

~~[(6)]~~~~[(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.

~~[(7)]~~~~[(c)]~~ 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~~[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>.

FILED WITH LRC: November 13, 2024

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.

FINANCE AND ADMINISTRATION CABINET State Investment Commission (As Amended at ARRS, November 13, 2024)

200 KAR 14:081. Repurchase agreement.

RELATES TO: KRS [41.640,]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,

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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 ~~may~~~~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, including completion of the Custodial Undertaking in Connection with Master Repurchase Agreement as needed or required, 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 at least~~[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 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)]~~~~[(e)]~~ 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.

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**FINANCE AND ADMINISTRATION CABINET
State Investment Commission
(As Amended at ARRS, November 13, 2024)**

200 KAR 14:091. Guidelines for money market instruments.

RELATES TO: KRS ~~[41.610,] 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 a 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 a 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) [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 a 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 a 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.]

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**FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, November 13, 2024)**

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 and [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)].

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(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

(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 a [the-] Notice of Intent[-] form. The committee shall issue a confirmation, using a [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 a [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.

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(2) The carry forward of any unallocated portion of the state ceiling may be for any purpose authorized by 26 U.S.C. [sec.][1146(f)].

(3) The committee shall issue a confirmation of the notice and election to carry forward, using a [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 shall[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 shall[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", December 2014[form specified by the Office of Financial Management and posted on its Web site];

(b) [The]"Confirmation of Allocation of State Ceiling", March 1998[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", March 1998[form specified by the Office of Financial Management and posted on its Web site];

(d) [The]"Notice of Issuance", March 1998[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", August 2022.

(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>.

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BOARDS AND COMMISSIONS

Board of Pharmacy

(As Amended at ARRS, November 13, 2024)

201 KAR 2:370. Pharmacy services in long-term care facility (LTCF).

RELATES TO: KRS 194A.710(2), 216.510(1), 315.010, 315.020, 315.030, 315.121

STATUTORY AUTHORITY: KRS 315.002, 315.005, 315.191

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy to establish requirements to regulate and control pharmacies. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled and require the board to ensure safety of all drug products provided to the citizens of Kentucky. This administrative regulation establishes requirements for pharmacy services in long-term care facilities.

Section 1. Definitions.

(1) "Automated Dispensing System" or "ADS" means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information.

(2) "Emergency Drug" means drugs required to meet the immediate therapeutic needs of patients that are not available from any other authorized source in sufficient time to prevent risk of harm to patients because of delay.

(3) "Emergency Medication Kit" or "EMK" means an onsite manual or automated mechanism for delivering emergency medications.

(4) "Immediate supervision" is defined by KRS 315.010(12).

(5) "Individual dose" means smallest unit that is commercially available.

(6) "Long-term care facility" or "LTCF" is defined by KRS 216.510(1), excluding family-care homes and assisted living communities as defined in KRS 194A.710(2)(a).

(7) "Long Term Care Facility Drug Stock" or "LTCF drug stock" means a dose or doses generated from a prescription order sufficient until the next pharmacy business day or IV fluids that are used for replenishment, which contain no additive drugs, or irrigation solutions.

(8) "Pharmacist-in-charge" or "PIC" means a pharmacist mandated as in charge under KRS 315.020 and who meets the requirements of 201 KAR 2:205.

(9) "Supervision" is defined by KRS 315.010(27).

(10) "Tamper-resistant secure container" means an enclosed container:

(a) Used in a tamper-resistant ADS; and

(b) Designed to prevent the opening of the container and manipulation of medications prior to loading the ADS and after the contents of the container have been enclosed and verified by a pharmacist.

Section 2. General Requirements.

(1) The pharmacist-in-charge of the dispensing pharmacy shall:

(a) Be responsible for policies and procedures governing the procurement, distribution, storage, security, access, administration, and control of all drugs that are provided to a LTCF;

(b) Review all policies and procedures at least once every twelve (12) months;

(c) Provide LTCF drug stock or an EMK only to facilities that authorize entry by a board agent for the purposes of inspection or investigation of the LTCF drug stock or EMK at the facility;

(d)

1. Maintain written authorization for entry; and

2. Immediately provide written authorization for entry to the board upon request of a board agent; and

(e) Maintain a current list of all locations where LTCF drug stock or an EMK are stored, which shall be made immediately available upon request by a board agent.

(2) Dispensing.

(a) Controlled substance medications shall be dispensed only by prescription drug order of a licensed practitioner.

(b) Non-controlled substance medications shall be dispensed only on a medical order or prescription drug order of a licensed practitioner.

(c) A medical order entered on the medical record of a patient at a LTCF shall contain:

1. Name of patient;

2. Date of issuance;

3. Name, strength, and dosage form of drug prescribed;

4. Directions for use; and

5. Practitioner's name.

(d) Each licensee shall comply with United States Pharmacopeia (USP) Chapter 7 Labeling regarding labeling and packaging.

(3) The services of a pharmacist shall be readily available at all times.

(4) Emergency drugs.

(a) Emergency drugs for controlled substances in a LTCF EMK shall be stocked pursuant to 902 KAR 55:070.

(b) Emergency drugs for non-controlled substances in an EMK shall not exceed six (6) individual doses of thirty (30) different non-controlled substances, per LTCF.

(c) The pharmacist-in-charge may request a waiver from the board to increase the number of doses or numbers of non-controlled substances in the EMK based on evidence of use.

(d) An EMK shall be assessed for outdated, damaged or adulterated drugs, and stock adequacy by:

1. A pharmacist or any lawful person as stated in 902 KAR 55:070 on a monthly basis for controlled substances; or

2. A pharmacist, a PIC authorized pharmacist intern, or certified pharmacy technician on a monthly basis for non-controlled substances.

(e) EMK drugs shall be supplied in unit dose packaging unless precluded by manufacturer packaging.

(f) An EMK shall be conspicuously labeled.

(g) An EMK drug shall be accessed only upon a lawful prescription order.

(h) All prescription orders shall be reviewed by a pharmacist within one (1) pharmacy business day.

(i) An EMK shall not be stocked in a personal care home, assisted living community with basic health care, or assisted living community with dementia care without personnel lawfully licensed to administer medications.

(5) Initial dose of LTCF drug stock in a LTCF.

(a) Excluding personal care homes, assisted living communities with basic health care, or assisted living communities with dementia care, LTCF drug stock of drugs shall not exceed fifteen (15) individual doses each of 150 non-controlled substances.

(b) LTCF drug stock in a personal care home, assisted living community with basic health care, or assisted living community with dementia care shall not exceed five (5) individual doses each of thirty (30) non-controlled substances.

(c) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be placed in LTCF drug stock based upon evidence of use.

(d) The pharmacist-in-charge shall be responsible for authenticating the need for LTCF drug stock.

(e) A pharmacist shall review the prescription drug or medical order before the release of medication.

(f) LTCF drug stock shall be inspected by pharmacy personnel at least monthly and documentation shall be maintained to determine if:

1. Medications are outdated; and

2. Stocks are maintained at adequate levels.

(g) Except for LTCF drug stock of intravenous fluids with no additive drugs or irrigation solutions, the LTCF drug stock shall be replenished by:

1. A tamper-resistant secure container delivered from the pharmacy;

2. A tamper-resistant secure container for the stocking of an ADS;

3. A pharmacist, pharmacist intern, or a certified pharmacy technician who shall be under the immediate supervision of a pharmacist on-site, if there is no pharmacy on-site; or

4. A pharmacist, pharmacist intern, or a certified pharmacy technician who shall be under the supervision of a pharmacist, if there is a pharmacy on-site.

Section 3. The pharmacist-in-charge of an ADS in a LTCF shall be responsible for the following:

(1) Initial validation of the ADS accuracy prior to use for distribution to patients ensuring[assuring] that the ADS:

(a) Is in good order and accurately dispenses the correct strength, dosage form, and quantity of drug prescribed; and

(b) Complies with the recordkeeping and security safeguards pursuant to Section 4 of this administrative regulation.

(2) Ensuring[Assuring] that non-controlled substance prescription drug orders and medical orders are reviewed and approved by a pharmacist prior to access, except for emergency drugs;

(3) Ensuring[Assuring] that controlled substance prescription drug orders are reviewed and approved by a pharmacist prior to accessing the controlled substance emergency drugs;

(4) Implementing an ongoing quality assurance program that monitors performance of the ADS, pursuant to the written policies and procedures;

(5) Assigning, discontinuing, or changing personnel access to the system; and

(6) Ensuring[Assuring] appropriate access to medications.

Section 4. Standards. A permit holder utilizing an ADS shall comply with the following provisions:

(1) A pharmacy shall maintain the following documentation:

(a) Name and address of the LTCF where the system is being used;

(b) The ADS manufacturer's name, model, and serial number;

(c) An operations manual;

(d) Description of how the system is used;

(e) Written quality assurance procedures to determine continued appropriate use of the system; and

(f) Written policies and procedures for system operation, safety, security, accuracy, access, and malfunction.

(2) All written policies and procedures shall be maintained in the pharmacy responsible for the ADS.

(3) An ADS shall maintain adequate security systems and procedures, pursuant to written policies and procedures that prevent unauthorized access to patient records and maintain patient confidentiality.

(4) ADS records and data shall meet the following requirements:

(a) All events involving the contents of the ADS shall be recorded electronically; and

(b) Records shall be maintained by the pharmacy for five (5) years, be available to the board, and shall include the following:

1. The time and location of each system access;

2. Identification of the individual accessing the system;

3. Name of the patient for whom the drug was ordered;

4. Name, strength, dosage form, and quantity of drug accessed;

5. Type of transaction;

6. The prescription or transaction number if assigned; and

7. The name of the prescriber.

(c) All events involving user database modifications shall be recorded electronically and maintained.

(d) A twenty-four (24) hour emergency call center shall be available for any ADS malfunction.

(5) The stocking of all medications in an ADS shall be performed by a:

- (a) Pharmacist;
- (b) Pharmacist intern; or
- (c) Certified pharmacy technician who shall be under the supervision of a pharmacist on-site.

(6) If the pharmacy utilizes a tamper resistant barcoding technology, microchip, or other equivalent tamper-resistant ADS, a pharmacist-verified drug may then be loaded by a pharmacist-in-charge trained pharmacist, pharmacist intern, or certified pharmacy technician.

(7) A record of medications stocked in an ADS shall be maintained for five (5) years and shall include identification of the person stocking the ADS and the pharmacist checking for accuracy.

(8) The pharmacist-in-charge shall provide a policy for accounting for medications removed from an ADS and subsequently wasted.

(9) The pharmacist-in-charge shall provide a policy for accounting for medications returned to an ADS.

Section 5. Incorporation by Reference.

(1) "USP Chapter 7 Labeling", (September 1, 2023)(~~December 1, 2017~~), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m. or on the board's Web site at <https://pharmacy.ky.gov/statutesandregulations/Pages/default.aspx>

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BOARDS AND COMMISSIONS

Board of Pharmacy

(As Amended at ARRS, November 13, 2024)

201 KAR 2:480. Telework and electronic supervision for remote prescription processing.

RELATES TO: KRS 315.020(5), 315.310

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate and control all matters prescribed in KRS Chapter 315. KRS 315.020(5) authorizes order entry, order entry verification, and drug regimen review as tasks that may[can] be performed outside of the permitted space of the pharmacy. [The purpose of] This administrative regulation establishes the is-to provide minimum requirements for pharmacies located in Kentucky engaged in remote prescription processing conducted via telework and the requirements to establish rules for electronic supervision.

Section 1. Definitions.

(1) "Electronic Supervision" means[shall mean] the oversight provided by a pharmacist licensed in Kentucky and supervising, by means of a real-time electronic communication system, a pharmacist intern or registered pharmacy technician who is working for a permitted pharmacy.

(2) "Telework" means the practice or assistance in the practice of pharmacy by a contractor or an employee of the pharmacy from a remote location outside of the permitted pharmacy.

(3) "Telework Functions" means:

(a) For of a pharmacist includes[include]:

1. [(a)] Receiving, interpreting, or clarifying medical orders or prescription drug orders;

2. [(b)] Order entry and order entry verification;

3. [(c)] Transfer of prescription information;

4. [(d)] Prospective drug utilization reviews;

5. [(e)] Interpretation of clinical data;

6. [(f)] Refill authorizations;

7. [(g)] Performing therapeutic intervention; and

8. [(h)] Patient counseling; and

(b) [(4)] For "Telework Functions" of a pharmacy technician are limited to tasks authorized under KRS 315.020(5).

(4) [(5)] "Telework Site" means a location within the United States where a pharmacy technician assists[may assist] in the practice of pharmacy, or a pharmacist or pharmacist intern engages in the practice of pharmacy as a contractor[contractors] or an employee[employees] outside of the pharmacy located and permitted in Kentucky.

Section 2. Registration. The pharmacy and the pharmacist-in-charge of the pharmacy shall ensure[are responsible for ensuring] individuals at telework sites are licensed or registered with the board.

Section 3. Requirements.

(1) The pharmacy and pharmacist-in-charge, or the designee appointed by the pharmacist in charge shall ensure that interns and pharmacy technicians working under electronic supervision are supervised by a Kentucky licensed pharmacist.

(2) A pharmacist or intern that engages in the practice of pharmacy and a pharmacy technician that assists in the practice of pharmacy at a telework site shall be licensed or registered by the board and shall comply with all applicable federal and state law[laws and rules].

(3) Prescription drugs and related devices shall not be at a telework site.

(4) The pharmacy utilizing telework functions shall:

(a) Possess a written agreement with the licensee or registrant that includes all conditions, duties, and policies governing the licensee or registrant engaged in telework activities;

(b) Maintain a continuously updated, readily retrievable, list of all licensees and registrants engaged in telework and the:

1. Address and phone number for each telework site;

2. Functions being performed by licensees or registrants engaged in telework; and

3. The name of the pharmacist providing supervision for each non-pharmacist registrant.

(5) The pharmacist-in-charge or the designee appointed by the pharmacist in charge of a pharmacy utilizing telework functions shall:

(a) Develop, implement, and enforce a continuous quality improvement program designed to objectively and systematically:

1. Monitor, evaluate, and document the quality and appropriateness of patient care;

2. Improve patient care;

3. Identify, resolve, and establish the root cause of dispensing and drug utilization review errors; and

4. Implement measures to prevent recurrence;

(b) Develop, implement, and enforce a procedure for identifying the pharmacist, intern, and pharmacy technician responsible for telework functions; and

(c) Develop, implement, and enforce a process for a virtual inspection of each telework site where a pharmacist technician is assisting in the practice of pharmacy or a pharmacist intern is engaged in the practice of pharmacy by a pharmacist at least once every twelve (12) months or more frequently as determined[deemed] necessary by the pharmacist. The inspection shall be documented and records retained. Board staff may[are authorized to] request and participate in virtual inspections.

Section 4. Electronic Supervision Requirements. The pharmacy, pharmacist-in-charge, or the designee appointed by the pharmacist in charge and the supervising pharmacist from the pharmacy shall:

(1) Utilize an electronic communication system and have appropriate technology or interface to allow access to information required to complete assigned duties;

(2) Ensure a pharmacist is supervising and directing each intern and pharmacy technician and that the electronic communication system is operational;

(3) Ensure that a pharmacist, using professional judgment, determines the frequency of check-ins with registrants to ensure patient safety, competent practice, and compliance with federal and state laws.

(4) Ensure that a pharmacist is readily available to answer questions and be fully responsible for the practice and accuracy of the registrant; and

(5) Ensure the intern or pharmacy technician knows the identity of the pharmacist who is providing supervision and direction.

Section 5. Confidentiality. The Kentucky permitted pharmacy, pharmacist-in-charge of the pharmacy, or the designee appointed by the pharmacist in charge, and the pharmacist, intern, and pharmacy technician shall:

(1) Ensure patient and prescription information is managed in compliance with current state and federal law;

(2) Ensure the security and confidentiality of patient information and pharmacy records;

(3) Document in writing and report to the board within ten (10) days of discovery any confirmed breach in the security of the system or breach of confidentiality; ~~and~~;

(4) Report any breach of security or confidentiality to the Kentucky permitted pharmacy within twenty-four (24) hours of discovery and to the board within ten (10) days.

Section 6. Technology. The pharmacist-in-charge or the designee appointed by the pharmacist in charge shall:

(1) Test the electronic communication system with the telework site and document that it operates properly before the intern or pharmacy technician engages in telework at the telework site; ~~and~~;

(2) Develop, implement, and enforce a plan for responding to and recovering from an interruption of service which prevents a pharmacist from supervising and directing the intern and pharmacy technician at the telework site; ~~and~~;

(3) Ensure access to appropriate and current pharmaceutical references based on the services offered and shall include Kentucky Revised Statutes, Kentucky Administrative Regulations, United States Code, Code of Federal Regulations, standards adopted by reference, and the Board of Pharmacy quarterly newsletters; ~~and~~;

(4) Train the pharmacists, interns, and pharmacy technicians in the operation of the electronic communication system.

Section 7. Security.

(1) The pharmacist-in-charge or the designee appointed by the pharmacist in charge and each pharmacist supervising a telework site ~~shall ensure is responsible for ensuring~~ the telework site has a designated work area that is secure and has been approved by a pharmacist prior to utilization.

(2) Confidentiality shall be maintained ~~so~~ ~~such~~ that patient information cannot be viewed or overheard by anyone other than the pharmacist, intern, or pharmacy technician.

(3) All computer equipment used for telework shall:

(a) Establish and maintain a secure connection to the pharmacy and patient information;

(b) Utilize a program that prevents unauthorized access to the pharmacy and patient information; and

(c) Ensure the pharmacy and patient information is not accessed ~~if when~~;

1. There is ~~not a~~ ~~no~~ pharmacist actively supervising the intern or pharmacy technician at a telework site;

2. There is ~~not an~~ ~~no~~ intern or pharmacy technician present at the electronically supervised telework site; or

3. Any component of the electronic communication system is not functioning; or

(d) Be configured so information from any patient or pharmacy records are not duplicated, downloaded, or removed from the electronic database ~~if when~~ an electronic database is accessed remotely.

(4) A record shall be maintained with the date, time, and identification of the licensee or registrant accessing patient or pharmacy records at a telework site.

(5) All records shall be stored in a secure manner that prevents access by unauthorized persons.

Section 8. Policies and Procedures.

(1) The pharmacy and the pharmacist-in-charge, or the designee appointed by the pharmacist in charge ~~shall be~~ ~~are~~ accountable for establishing, maintaining, and enforcing written policies and procedures for the licensees working via telework. The written policies and procedures shall be maintained at the pharmacy and shall be available to the board upon request.

(2) The written policies and procedures shall include the services and responsibilities of the licensee or registrant engaging in telework including:

(a) Security;

(b) Operation, testing, training, and maintenance of the electronic communication system;

(c) Detailed description of work performed;

(d) Pharmacist supervision and direction of interns and pharmacy technicians;

(e) Recordkeeping;

(f) Patient confidentiality;

(g) Continuous quality improvement;

(h) Plan for discontinuing and recovering services if the electronic communication system is disrupted;

(i) Confirmation of secure telework sites;

(j) Documenting the identity, function, location, date, and time of the licensees engaging in telework at a telework site;

(k) Written agreement with contracted licensees engaging in telework outlining the specific functions performed and requirement to comply with telework policies and procedures; and

(l) Equipment.

Section 9. Records.

(1) The recordkeeping requirements of this administrative regulation ~~shall be~~ ~~are~~ in addition to 201 KAR 2:171.

(2) A pharmacy utilizing registrants or licensees via telework shall be able to produce a record of each pharmacist, pharmacist intern, or pharmacy technician involved in each order entry function. The record shall include the date and time when each step function was completed.

(3) Physical records shall not be stored at the telework site.

(4) Records shall not be duplicated, downloaded, or removed ~~if when~~ accessed via telework.

(5) Records shall be stored in a manner that prevents unauthorized access.

(6) Records shall include ~~items such as~~ ~~but are not limited to~~:

(a) Patient profiles and records;

(b) Patient contact and services provided;

(c) Date, time, and identification of the licensee or registrant accessing patient or pharmacy records;

(d) If processing prescriptions, date, time, and identification of the licensee or registrant and the specific activity or function of the person performing each step in the process;

(e) Training records;

(f) Virtual inspections; ~~and~~

(g) List of employees performing telework that includes:

1. Name;

2. License or registration number and expiration date;

3. Address of telework site; and

4. Name of the Kentucky licensed pharmacist who:

a. Supervised the intern or pharmacy technician;

b. Approved licensee to telework; and

c. Approved each telework site; ~~and~~;

(h) Electronic communication system testing and training; ~~and~~;

Section 10. Prohibited Practices. Final product verification and dispensing from a location outside of or other than a permitted pharmacy ~~shall not occur~~ ~~are prohibited~~ in telework.

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BOARDS AND COMMISSIONS
Board of Dentistry
(As Amended at ARRS, November 13, 2024)

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 ~~that~~ 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;

(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 that 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 hygienist licenses issued by the board shall expire on December 31 of even-numbered[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 Licensure;

(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]

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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 Reinstatement [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 Reinstatement 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 Reinstatement 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 fee established 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)]; and

(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]

[4] [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:

- (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 shall must complete a live three (3) hour course approved by the board 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~~[or]~~
- (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~~[or]~~
- (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. The application of silver diamine fluoride if when the supervising dentist has authorized the~~[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 providing the services referenced in paragraph (a) of this subsection~~[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)

(a) During each biennial license period, a dental hygienist registered in public health dental hygiene shall~~must~~ complete the following to maintain registration upon license renewal:

1. (a) Three (3) hours of continuing education in public health or public dental health; and

2. (b) Three (3) hours of continuing education in the identification and prevention of potential medical emergencies.

(b)(c) The~~These~~ hours of continuing education required by paragraph (a) of this subsection 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>.

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BOARDS AND COMMISSIONS

Board of Licensure for Professional Engineers and Land Surveyors

(As Amended at ARRS, November 13, 2024)

201 KAR 18:010. Classes of applicants for licensure for professional engineering and land surveying.

RELATES TO: KRS 322.010, 322.040, 322.045, 322.120

STATUTORY AUTHORITY: KRS 322.040, 322.045, 322.120, 322.290(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(4) requires the board to promulgate administrative regulations governing professional engineers and land surveyors~~[322.040] [and 322.045 establish]~~~~[establishes] [the criteria for credentialing persons under the jurisdiction of the board. KRS 322.120 establishes the requirements for licensure by]~~~~[endorsement]~~~~[reciprocity]~~. This administrative regulation establishes the classes of applicants for professional engineer~~[engineers]~~ and professional land surveyor~~[surveyors]~~ for convenience in discussing and processing applications for licensure~~[licenses]~~, certification, and examination.

Section 1. Classes of Applicants.

~~[(4)]~~ For convenience in discussing and processing applications for licensure~~[licenses]~~, certification, and examinations, there shall be~~are hereby established the following~~ four (4) classes of applicants as established in subsections (1) through (4) of this section.~~[(1)–]~~

~~(1) [(2)]~~ Professional engineer. This class shall include~~[includes]~~ those applying for an engineering license~~[licenses]~~ pursuant to KRS 322.040(1) and~~[(2) [and (4)–] or 322.120.~~

~~(2) [(3)]~~ Engineer in training~~[Engineer-in-training]~~. This class shall include~~[includes]~~ those applying for certification as an engineer in training~~[engineers-in-training]~~ pursuant to 201 KAR 18:030.

~~(3) [(4)]~~ Professional land surveyor. This class shall include~~[includes]~~ those applying for a land surveying license pursuant to KRS 322.045(1)~~[322.040(3) and (4)]~~ or 322.120.

~~(4) [(5)]~~ Land surveyor in training~~[surveyor-in-training]~~. This class shall include~~[includes]~~ those applying for certification as a land surveyor in training~~[surveyors-in-training]~~ pursuant to 201 KAR 18:030.

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BOARDS AND COMMISSIONS

Board of Licensure for Professional Engineers and Land Surveyors

(As Amended at ARRS, November 13, 2024)

201 KAR 18:030. Engineer in training and land surveyor in training~~[In-training]~~ certificates.

RELATES TO: KRS 322.010, 322.040, 322.045~~[(322.047), 322.120]~~

STATUTORY AUTHORITY: KRS ~~[322.010,]~~322.040, 322.045~~[(322.047), 322.120, 322.290(4)]~~

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 322.010 defines engineer in training and land surveyor in training.]~~KRS 322.290(4) requires~~[provides]~~ the board ~~[with the authority]~~to promulgate administrative regulations governing professional engineers and land surveyors~~[necessary to perform its duties]~~.

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This administrative regulation establishes~~outlines~~ the requirements for the testing of basic sciences and fundamentals of engineering and land surveying for the application for engineer in training and land surveyor in training certificates~~under the certification program for in-training engineers and land surveyors under which the board has provided for early testing of basic sciences and fundamentals of engineering and land surveying~~.

Section 1. Examinations are offered in the fundamentals of engineering (FE) and fundamentals of ~~land~~ surveying (FS)~~(FLS)~~ provided by the National Council of Examiners for Engineering~~[Engineers]~~ and Surveying~~[Land-Surveyors]~~.

Section 2. Pursuant to KRS 322.040 and 322.045, the final year shall begin upon completion of at least 105 semester credit hours in the program.

Section 3. The executive director shall approve or disapprove, based on the criteria established in Section 4 of this administrative regulation, [is authorized to approve] applications for the FE and FS examinations, and for engineer in training and land surveyor in training certificates.~~[A qualified applicant who passes the examination shall be issued a certificate of recognition as engineer in training or land surveyor in training. The certificate shall be valid indefinitely with no renewal fees.]~~

Section 4. A qualified individual who passes the examination and applies to the board shall be issued an engineer in training or land surveyor in training certificate. The certificate shall be valid indefinitely with no renewal fees.~~[The executive director is authorized to approve applications for the FE and FLS examinations.]~~

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BOARDS AND COMMISSIONS Board of Licensure for Professional Engineers and Land Surveyors (As Amended at ARRS, November 13, 2024)

201 KAR 18:115. License reinstatement for professional engineers and land surveyors.

RELATES TO: KRS 322.040-322.050, 322.120, 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) requires~~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 submit 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.]~~~~[If]~~ licensure.~~]~~ This administrative regulation establishes the requirements for license reinstatement for professional engineers and land surveyors.

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~~preceding~~ 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 shall~~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 the board 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:

- (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 shall~~may~~ approve or disapprove~~reject~~ the~~[that]~~ application based upon the requirements of KRS 322.040, 322.045, 322.050, and 322.120.

(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 all previous terms of any consent decrees or orders of the board, or with any previous orders of suspension or revocation~~[any terms prescribed by the board]~~; and

(b) Is no longer a risk to the public health, safety, or~~and~~ welfare.

(4) An applicant for reinstatement under this section shall:

(a) Be held to a substantially more rigorous standard than a first-time~~[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 orders of the board, 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, including 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 requirement of KRS Chapter 322 or 201 KAR Chapter 18~~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 or not 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 shall be grounds~~may constitute a sufficient basis~~ for denial of an applicant's petition.

Section 4. Reconsideration.

(1) If an application for reinstatement is disapproved~~not approved~~, the applicant shall be given ~~every~~~~reasonable~~ opportunity to secure reconsideration.

(2) If an application for reinstatement is disapproved~~not approved~~ by the executive director pursuant to Section 2(1)~~paragraph (1) of Section 2~~ of this administrative regulation, the applicant may request reconsideration by the board. To request reconsideration, an applicant shall file~~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 disapproved~~not approved~~ by the board's executive director.

(3) If an application for reinstatement is denied~~is not approved~~ by the board pursuant to Section 2(2) of this administrative regulation, Section 3 of this administrative regulation, or subsection (2) of this section, 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~~.

(a) To request a hearing, the applicant shall file a request for an administrative hearing with the board within thirty (30) calendar days after the date upon which the application for reinstatement was denied.

(b) The request for an administrative hearing shall:

1. Be signed and dated by the applicant; and

2. In numerical paragraphs, identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(c) The hearing process shall be in accordance with the provisions of KRS Chapter 13B.

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BOARDS AND COMMISSIONS

Board of Licensure for Professional Engineers and Land Surveyors

(As Amended at ARRS, November 13, 2024)

201 KAR 18:192. Continuing professional development for professional land surveyors.

RELATES TO: KRS 322.180(3), 322.190, ~~322.270,~~ 322.290(15)

STATUTORY AUTHORITY: KRS 322.290(4), (15)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290~~(4) and (15) require~~~~(15) requires~~ the board to promulgate administrative regulations to establish~~adopt~~ a program of continuing education for professional land surveyors. This administrative regulation establishes requirements ~~for implementation~~ the continuing professional development program mandated by KRS 322.290(15) for professional land surveyors.

Section 1. Definitions.

(1) "Calendar year" means a one (1) year~~one-year~~ period of time beginning on January 1 and ending on December 31. "Completion" means the professional land surveyor has satisfactorily met specific requirements of an offering by taking and passing a university course or attending a seminar.]

(2) "Contact hour" means a minimum of fifty (50) minutes of instruction or presentation.

(3)[(2)] "Continuing professional development" or "CPD" means participation in activities, beyond the basic educational requirements, that:

(a) Provide specific content planned and evaluated to improve the professional land surveyor's [professional]-competence;

(b) Encourage acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the professional land surveyor's critical inquiry and balanced judgment;

(d) Raise the ethical standards within the professional community; and

(e) Meet the requirements established by this administrative regulation.

(4) "Dual Licensee" means a person licensed as both a professional land surveyor and a professional engineer.

(5)[(3)] "Licensee" means a person licensed as a professional land surveyor. "CPDC" means the Continuing Professional Development Committee.]

(6)[(4)] "Professional development hour" or "PDH" means one (1) nominal contact hour~~not less than fifty (50) minutes~~ of instruction or presentation that meets the requirements of this administrative regulation.

(7)[(5)] "Provider" means a person, school, association, company, corporation, or group who has developed a CPD activity and participates directly in the presentation.

(8)[(6)] "Reporting period" means the two (2) calendar years preceding the June 30 deadline for renewal of license. "Sponsor" means a group, organization, or professional society, offering activities by providers.]

(9) "Surveying Committee" means the Surveying Committee of the State Board of Licensure for Professional Engineers and Land Surveyors.

[Section 2.] [Continuing Professional Development Committee.]
 [(1)] [The chair of the State Board of Licensure for Professional Engineers and Land Surveyors shall appoint a Continuing Professional Development Committee and name its chair.]

[(2)] [The CPDC shall consist of five (5) board of licensure members of which at least three (3) are professional land surveyors.]

[(3)] [Work of the CPDC shall be considered work of the board, and compensation shall be given as provided by KRS 322.270.]

[(4)] [The CPDC shall hold regular meetings, and a record of its action shall be maintained.]

[(5)] [The CPDC may rule on all matters concerning continuing professional development for professional land surveyors.]

[(a)] [In order to be binding, a decision of the CPDC shall be ratified by the board.]

[(b)] [A licensee who disagrees with a decision of the CPDC may direct his or her concerns to the board for consideration at a subsequent meeting of the board.]

Section 2. [Section 3.] Program Structure.

(1) Except as established provided in [by] Section 5[6(1) and (2)] of this administrative regulation [and subsection (3) of this section], a licensee [professional land surveyor] shall complete [and report to the board a minimum of eight (8) professional development hours for each calendar year, for a total of] a minimum of sixteen (16) PDH units [professional development hours for] each reporting period.

(2) The requirement for continuing professional development [hours] shall include a four (4) PDH [hour] course, pre-approved by the Surveying Committee **based on the criteria established in Section 9 of this administrative regulation** [CPDC], in standards of practice for professional land surveyors, professional ethics, and the code of professional practice and conduct, taken once every four (4) years. This [In the year that this] course [is taken, it] shall count as four (4) of the required sixteen (16) PDH for the reporting period in which it is taken [eight (8) hours].

(3) If a licensee exceeds the requirement, a [A] maximum of eight (8) PDH units [four (4) hours in excess of the sixteen (16) professional development hours required to be earned in a reporting period] may be carried forward to the next reporting period.

(4) PDH units earned by a dual licensee under this administrative regulation may also be used to meet the professional engineer requirements under 201 KAR 18:196 if the PDH units also meet the requirements of 201 KAR 18:196.

(5) [(4)] Failure to earn the required PDH units [sixteen (16) professional development hours per reporting period] shall constitute unprofessional conduct [make the licensee ineligible for licensure renewal].

Section 3. [Section 4.] Criteria for Professional Development.

(1) Continuing professional development activities applicable to the renewal of the license shall be directly related to the professional growth and development of the professional land surveyor.

(2) [(1)] PDH units [Professional development hours] may be earned upon [by] successful completion of the following activities:

(a) College or university courses;

(b) Continuing education courses [Seminars];

(c) Short courses, tutorials, webinars, and distance-education courses offered as face-to-face programs, live internet-based programs, archived prerecorded programs, or archived correspondence programs [Tutorials];

(d) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, conferences, or educational institutions [In-house programs sponsored by corporations or other organizations];

(e) [Correspondence courses;]

[(f)] [Televised or videotaped courses;]

[(g)] [Distance learning courses;]

[(h)] Teaching or instructing activities [courses, programs, or items] established specified in paragraphs (a) through (d) [(g)] of this subsection; [-]

[4.] [This credit may be claimed at twice the number of hours permitted participants.]

[2.] [The credit shall not be claimed more than once for teaching or instructing the same or substantially similar course, program, or item;]

[(i)] [Making or attending approved presentations at technical or professional meetings; or]

[(f)] [(g)] Authoring published [Publication of] papers, articles, [or] books, or accepted licensing examination items related to the practice of land surveying; or [-]

(g) Active participation in professional or technical societies as authorized in subsection (5)(g) of this section.

(3) [(2)] To qualify for credit, activities [Activities] established described in subsections [subsection] (1) and (2) of this section shall:

(a) Be relevant to the practice of land surveying;

(b) Contain technical, ethical, or managerial subjects;

(c) Be an organized program of learning;

(d) Be conducted by individuals with education, training, or expertise; and

[(e)] [Be offered for the number of professional development hours recommended by the program author, subject to review and acceptance or adjustment by the CPDC; and]

(e) [(f)] Not include:

1. In-service training;

2. Orientation to specific institutional policies and practices; or

3. Time used to sell or advertise a product; or [-]

4. Self-study.

(4) [(3)] CPD activities shall be credited earn credit only if substantially different from a course for which credit was claimed or granted in the current reporting period [calendar year or previous two (2) calendar years].

(5) [(4)] PDH units [Professional development hours] shall be converted as established in paragraphs (a) through (g) of this subsection follows: [established in paragraphs (a) through (c) of this subsection:]

(a) Credit for college or university courses shall be based upon course credit established by the college or university.

1. [(a)] One (1) university semester hour shall equal forty-five (45) PDH units [fifteen (15) professional development hours].

2. [(b)] One (1) university quarter hour shall equal thirty (30) PDH units [ten (10) professional development hours].

[(b)] [(c)] One (1) continuing education unit shall equal ten (10) PDH units [professional development hours].

(c) One (1) nominal contact hour of professional development in coursework, seminars, or professional or technical presentations made at meetings, conventions, or conferences shall equal one (1) PDH unit. The total number of hours allowed for an activity shall not cannot exceed the actual number of clock hours.

(d) Credit for correspondence, televised, videotaped, distance learning, and other short courses or tutorials shall be the equivalent PDH units recommended by the program author subject to board review.

(e) For teaching an activity established in subsection (2)(a) through (d) of this section described in paragraphs (a) through (d) of Section 3(2), multiply the number of PDH units earned by participants for that activity by two (2). Teaching credit shall only be valid for the first time the activity is taught.

(f) Each published paper, article, or book shall equal ten (10) PDH units.

(g) Active participation in a professional or technical society shall equal two (2) PDH units for each organization.

1. Credit for active participation in professional or technical societies shall require that the licensee serve as an officer or committee chair of the organization.

2. PDH units shall not be earned until the end of each year of service is completed.

Section 4. Recordkeeping.

(1) The licensee shall be responsible for maintaining records used to support PDH units claimed.

(2) Records required include:

(a) A log showing the date of the activity, provider, location, activity title, description, presenter's name, and PDH units earned; and

(b) Attendance certification records in the form of completion certificates or other documents supporting evidence of attendance.

[Section 5.] [Approval of a Continuing Professional Development Activity. Activity approvals may be granted for sponsors, providers, or individual professional land surveyors.]

[(1)] [Approval of activities shall be valid for a specified approval period or until alteration of the activity is approved by the CPDC.]

[(2)] [Failure to notify the CPDC of a change in an activity, including a change in the instructor, may render approval of the activity null and void.]

[(3)] [Prior to approval, an activity shall not be advertised as approved for Kentucky professional land surveyors but may be advertised that the activity has been "submitted for consideration."]

[(4)] [If prior or post approval is desired, a written request for approval of the activity shall be submitted to and received by the CPDC on the Continuing Professional Development Course Approval Form at least forty-five (45) days prior to the meeting date of the CPDC at which the request will be considered.]

[(5)] [All requests for approval of an activity shall be accompanied by:]

[(a)] [A detailed outline and objectives;]

[(b)] [A time outline including registration, introductions, welcomes, breaks, and meals;]

[(c)] [Handouts or reference materials needed to evaluate the activity; and]

[(d)] [A resume for each instructor or speaker in the activity.]

[(6)] [The CPDC or board may send a representative to monitor an activity.]

[(a)] [The provider or sponsor shall waive all fees for the CPDC or board representative.]

[(b)] [Approval for the activity may be withdrawn for subsequent iterations of the activity, if significant variation is observed from the approved activity.]

[(7)] [An evaluation form shall be made available for participants at each presentation.]

[(8)] [An individual under disciplinary action from the board or a business entity with a principal who is under disciplinary action from the board shall not present a CPD activity for credit without prior, written approval from the board.]

[(9)] [If a provider fails to obtain prior approval, a professional land surveyor may request credit for an activity by making a written request for post approval to the CPDC and including in that request, the items listed in subsection (5) of this section.]

[(10)] [Upon approval, an activity shall receive a CPD number, which shall be used to identify the activity.]

[(11)] [If an activity is not approved by the CPDC, the requestor shall be sent notice of nonapproval within two (2) weeks of its decision. This decision shall be presented to the board at its next meeting for consideration of ratification.]

Section 5.[Section 6.] Exemptions and Extensions.[—A professional land surveyor may be exempted from the requirements of this administrative regulation by submitting a written request to the CPDC with supporting documentation for the exemption if a requirement established in this section is met.]

(1) A licensee[professional land surveyor] shall be exempted from continuing professional development requirements for the [reporting period containing the]calendar year in which the licensee[he or she] is initially licensed by the board. If the licensee is initially licensed in the first calendar year of the reporting period, the number of PDH units required for that reporting period shall be eight (8) PDH units.

(2) A licensee who is on active duty in the Armed Forces of the United States shall be exempted from continuing professional development requirements for those years in which the licensee was on active duty.

(3) A former licensee[An individual] who has selected inactive or retired status shall be exempted from continuing professional development requirements.

(4)[(2)] A licensee[professional land surveyor] who is unable to[cannot] satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance shall[may] be

granted an extension[exempted] for the calendar year in which the disability, illness, or extenuating circumstance occurs.

(5) [The board][CPDC][~~may grant an extension of time to fulfill the~~][yearly][~~CPD requirement for an extenuating circumstance.~~]

[(6)] [(3)] An [exemption or]extension request shall be made in writing, with supporting documentation, to the board during the calendar year in which the [exemption or]extension is requested[for each calendar year], and the [exemption or]extension shall only be valid for that calendar year.

Section 6.[Section 7.] Reinstatement. Before a license is reinstated by the board under 201 KAR 18:115, a former licensee[professional land surveyor] shall earn the PDH units[continuing professional development hours] required for each reporting period[year] the license was revoked, suspended, [or]expired, or in inactive or retired status up to a maximum of thirty-two (32) PDH units[professional development hours].

Section 7.[Section 8.] Reporting.

[(4)] A licensee[professional land surveyor] shall certify on the Online Individual Renewal Professional Land Surveyor form whether or not the licensee[he or she] has complied with the requirements of this administrative regulation during the biennial renewal of license[on the Electronic License Renewal Application, available at www.kyboels.ky.gov]. The failure to truthfully report compliance with this administrative regulation shall constitute unprofessional conduct.

[(2)] [Biennial renewal forms received after September 1 shall be subject to the audit process in Section 9 of this administrative regulation.]

Section 8.[Section 9.] Audits.

(1) Compliance with the [annual]CPD requirements shall be determined through an audit process.

(2) Four (4) percent of licensees who have completed their biennial renewals before September 1 of their renewal year shall be selected for audit through a random selection process[Professional land surveyors shall be audited through a random selection process or as the result of information provided to the board].

(3) All licensees who complete their biennial renewals on or after September 1 of their renewal year shall be audited subjected to the audit process.

(4) A licensee who is the subject of an investigation pursuant to KRS 322.190 shall be audited subjected to the audit process.

(5)[(3)] A licensee[Individuals] selected for audit shall provide the board with documentation as established described in Section 4 of this administrative regulation within thirty (30) days of the board's request[, provide the board with documentation of the CPD activities claimed for the renewal period. Appropriate documentation shall include:]

[(a)] [Verification records in the form of transcripts, completion certificates, or other documents supporting evidence of participation; or]

[(b)] [Information regarding seminar or course content, instructors, and sponsoring organizations.]

[(4)] [Individual licensees shall maintain verification records and documentation for audit purposes for the current reporting period and at least the two (2) previous reporting periods.]

(6)[(5)] If continuing professional development credit is disallowed, the licensee[a professional land surveyor] shall have sixty (60)[180] calendar days after notification to substantiate the original claim or earn other PDH units[credit] to meet the requirement.

(7)[(6)] Failure to comply with the CPD requirements shall constitute[be considered] a violation of KRS 322.180(3)[(3)] subjecting the licensee[professional land surveyor][~~to disciplinary action~~].

(8)[(7)] If a licensee fails to comply with the CPD requirements, the licensee shall automatically be auditedAn audit resulting in a determination of noncompliance shall subject the licensee[professional land surveyor]to an automatic audit forthe next reporting period and each subsequent reporting period until an audit results in a determination of compliance.

[(8)] [A professional land surveyor who is under investigation pursuant to KRS 322.190 shall be subject to the audit requirements of this section.]

Section 9. Approval for a Standards of Practice, Professional Ethics, and Code of Professional Practice and Conduct Course.

(1) The Surveying Committee shall pre-approve ~~or disapprove~~~~instructors for~~ a four (4) PDH course in standards of practice for professional land surveyors, professional ethics, and the code of professional practice and conduct **in accordance with this administrative regulation.**

(2) Approval of the course shall be valid for three (3) years.

(3) Failure to notify the board of a change in the course, including a change in the instructor, ~~shall~~~~may~~ render approval of the course null and void.

(4) A written request for approval of the course shall be submitted to and received by the board at least sixty (60) days prior to the meeting date of the Surveying Committee at which the request will be considered.

(5) All requests for approval of the course shall be accompanied by:

(a) A detailed outline and objectives;

(b) A time outline including registration, introductions, welcomes, breaks, and meals;

(c) All presentation materials, handouts, and reference materials; and

(d) A resume for instructor.

(6) The board may send a representative to monitor live presentations of the course.

(a) The provider shall notify the board at least sixty (60) days prior to providing a live presentation of the course.

(b) The provider shall waive all fees for the board representative and reimburse costs, if any, of attending the course.

(c) Approval for the course ~~shall~~~~may~~ be withdrawn for subsequent iterations of the course if significant variation is observed from the approved course.

(7) An evaluation form shall be made available for participants at each presentation.

(8) An individual under disciplinary action from the board or a business entity with a principal who is under disciplinary action from the board shall not present the course without prior, written approval from the board.

(9) Upon approval **in accordance with this administrative regulation**, an activity shall receive a CPD number, which shall be used to identify the course.

(10) If a course is not approved by the Surveying Committee, the requestor shall be sent notice of disapproval within two (2) weeks of its decision.

Section 10. Incorporation by Reference.

(1) "Online Individual Renewal – Professional Land Surveyor", October 2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at kyboels.gov. This decision shall be presented to the board at its next meeting for consideration of ratification.

[Section 10.] [Incorporation by Reference.]

[(1)] [The following material is incorporated by reference:]

[(a)] ["Continuing Professional Development Course Approval Form", November 1999, State Board of Licensure for Professional Engineers and Land Surveyors; and]

[(b)] ["Electronic License Renewal Application", 2012.]

[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

FILED WITH LRC: November 13, 2024

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BOARDS AND COMMISSIONS

Board of Licensure for Professional Engineers and Land Surveyors

(As Amended at ARRS, November 13, 2024)

201 KAR 18:196. Continuing professional development for professional engineers.

RELATES TO: KRS 322.180(3), 322.190, 322.290~~[(16)]~~

STATUTORY AUTHORITY: KRS 322.290~~(4)~~, (16)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290~~(4)~~ and ~~(16)~~ require~~(16)~~ requires the board to **promulgate administrative regulations to establish**~~adopt~~ a program of continuing education for professional engineers. This administrative regulation establishes requirements for the continuing professional development program mandated by KRS 322.290(16) for professional engineers.

Section 1. Definitions.

(1) "Calendar year" means a one (1) year period of time beginning on January 1 and ending on December 31.

(2) "Contact hour" means a minimum of fifty (50) minutes of instruction or presentation.

(3)~~[(4)]~~ "Continuing professional development" or "CPD" means participation in activities, beyond the basic educational requirements, that:

(a) Provide specific content to improve the professional engineer's competence;

(b) Encourage acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the professional engineer's critical inquiry and balanced judgment;

(d) Raise the ethical standards within the professional community; and

(e) Meet the requirements established by ~~the provisions of~~ this administrative regulation.

(4)~~[(2)]~~ "Dual licensee" means a person licensed as both a professional engineer and a professional land surveyor.

(5)~~[(3)]~~ "Licensee" means a person licensed as a professional engineer.

(6)~~[(4)]~~ "Professional development hour" or "PDH" means ~~one (1) nominal contact hour~~~~not less than fifty (50) minutes~~ of instruction or presentation that meets the requirements of this administrative regulation.

(7) "Provider" means a person, school, association, company, corporation, or group who has developed a CPD activity and participates directly in the presentation.

(8)~~[(5)]~~ "Reporting period" means the two (2) calendar years preceding the June 30 deadline for renewal of license.

Section 2. Program Structure.

(1) Except as ~~established~~~~provided~~ in Section 5~~[6]~~ of this administrative regulation, a licensee shall complete a minimum of thirty (30) PDH units each reporting period.

(2) If a licensee exceeds the requirement, a maximum of fifteen (15) PDH units may be carried forward to the next reporting period.

(3) PDH units earned by a dual licensee under this administrative regulation may also be used to meet the professional land surveyor requirements under 201 KAR 18:192 if the PDH units also meet the requirements of 201 KAR 18:192~~that administrative regulation~~.

(4) Failure to earn the required PDH units shall constitute unprofessional conduct.

Section 3. Criteria for Professional Development.

(1) Continuing professional development activities[education hours] applicable to the renewal of the license shall be directly related to the professional growth and development of the professional engineer.

(2) PDH units may be earned upon[by] successful completion of ~~the following activities~~:

(a) College or university courses;

(b) Continuing education courses;

(c) Short courses, tutorials, webinars, and distance-education courses offered as face-to-face programs, live internet-based programs, archived prerecorded programs, or archived correspondence programs[Correspondence, televised, videotaped, distance-learning, and other short course or tutorials];

(d) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, [or-]conferences, or educational institutions;

(e) Teaching or instructing activities established[specified] in paragraphs (a) through (d) of this subsection;

(f) Authoring published papers, articles, books, or accepted licensing examination items related to the practice of engineering; or[and]

(g) Active participation in professional or technical societies as authorized in subsection (5)(g) of this section[Section 4(6)].

(3) ~~To~~[In order to] qualify for credit, activities established[described] in subsections (1) and (2) of this section shall:

(a) Be relevant to the practice of engineering;

(b) Contain technical, ethical, or managerial subjects;

(c) Be an organized program of learning;

(d) Be conducted by individuals with education, training, or expertise; and

(e) Not include:

1. In-service[in-service] training;[.]

2. Orientation[orientation] to specific institutional policies and practices;[.] or

3. Time[time] used to sell or advertise a product; or[.]

4. Self-study.

(4) CPD activities shall earn credit only if substantially different from a course for which credit was claimed or granted in the current reporting period[previous two (2) calendar years].

(5) PDH units shall be converted as established in paragraphs (a) through (g) of this subsection[follows:]

(a) Credit for college or university courses shall be based upon course credit established by the college or university.

1. ~~(a)~~ One (1) university semester hour shall equal forty-five (45) PDH units.

2. ~~(b)~~ One (1) university quarter hour shall equal thirty (30) PDH units.

(b) One (1) continuing education unit shall equal ten (10) PDH units.

(c) One (1) nominal contact hour of professional development in coursework, seminars, or professional or technical presentations made at meetings, conventions, or conferences shall equal one (1) PDH unit. The total number of hours allowed for an activity shall not[cannot] exceed the actual number of clock hours.

(d) Credit for correspondence, televised, videotaped, distance learning, and other short courses or tutorials shall be the equivalent PDH units recommended by the program author[subject to board review].

(e) ~~(e)~~ For teaching an activity established[described] [established] in subsection (2)(a) through (d) of this section[paragraphs (a) through (d) of Section 3(2)], multiply the number of PDH units earned by participants for that activity by two (2). Teaching credit shall only be valid for the first time the activity is taught.

(f) ~~(f)~~ Each published paper, article, or book shall equal ten (10) PDH units.

(g) ~~(g)~~ Active participation in professional or technical societies[society] shall equal two (2) PDH units for each organization.

1. Credit for active participation in professional or technical societies shall require that the licensee serve as an officer or committee chair of the organization.

2. PDH units shall not be earned until the end of each year of service is completed.

[Section 4.] [Determination of Credit.]

[(1)] [Credit for college or university courses shall be based upon course credit established by the college or university.]

[(2)] [Credit for qualifying seminars and workshops shall be based upon one (1) PDH for each fifty (50) minutes of instruction or presentation.]

[(3)] [Attendance at qualifying programs presented at professional or technical society meetings shall earn PDH units for the actual time of each program.]

[(4)] [Credit for correspondence, televised, videotaped, distance learning, and other short courses or tutorials shall be the equivalent PDH units recommended by the program author subject to board review.]

[(5)] [Teaching credit shall be valid for teaching a course or seminar for the first time only.]

[(6)]

[(a)] [Credit for active participation in professional or technical societies shall require that the licensee serve as an officer or committee chair of the organization.]

[(b)] [PDH units shall not be earned until the end of each year of service is completed.]

Section 4.[Section 5.] Recordkeeping.

(1) The licensee shall be responsible for maintaining records used to support PDH units claimed.

(2) Records required include:

(a) A log showing the date of the activity, provider[sponsoring organization], location, activity title, description, presenter's name, and PDH units earned; and

(b) Attendance certification records in the form of completion certificates or other documents supporting evidence of attendance.

Section 5.[Section 6.] Exemptions and Extensions.

(1) A licensee shall be exempted from continuing professional development requirements for the calendar year in which the licensee is initially licensed by the board. If a licensee is initially licensed in the first calendar year of the reporting period, the number of PDH units required for that reporting period shall be fifteen (15) PDH units.

(2) A licensee who is on active duty in the Armed Forces of the United States shall be exempted from continuing professional development requirements for those years in which the licensee was on active duty.

(3) A licensee who was licensed prior to January 1, 1972, and has kept the license in good standing since becoming licensed, shall be exempted from continuing professional development requirements.

(4) ~~(2)~~ A former licensee[An individual] who has selected inactive or retired status shall be exempted[exempt] from continuing professional development[the] requirements[of this administrative regulation].

(5) ~~(3)~~ A licensee who is unable to satisfy the CPD requirement because of physical disability, illness, or other extenuating circumstance shall[may] [shall] be granted an extension[exempted] for the reporting period in which the disability, illness, or extenuating circumstance occurs.

(6) ~~(4)~~ The board may[shall] grant an extension of time to fulfill the CPD requirement for an extenuating circumstance.

(7) ~~(5)~~ An exemption or extension request shall be made in writing, with supporting documentation, to the board during the calendar year in which the exemption or extension is requested, and the exemption or exemption or extension shall only be valid for that calendar year.

Section 6.[Section 7.] Reinstatement. Before a license shall be reinstated by the board under 201 KAR 18:115, a former licensee shall earn the PDH units required for each reporting period the

license was revoked, suspended, [or] expired, or in inactive or retired status up to a maximum of sixty (60) PDH units.

Section 7. [Section 8.] Reporting.

[(1)] A [On the biennial renewal form, a] licensee shall certify **on the Online Individual Renewal – Professional Engineer form** whether or not the licensee has complied with [met] the requirements of this administrative regulation during the biennial renewal of license. The failure to truthfully report compliance with this administrative regulation shall constitute unprofessional conduct.

[(2)] [Biennial renewal forms received after September 1 shall be subject to the audit process established in Section 9 of this administrative regulation.]

Section 8. [Section 9.] Audits.

(1) Compliance with the CPD requirements shall be determined through **an audit process** [a random selection process in which a computer program shall select five (5) percent of the licensees filing biennial renewal forms on or before September 1 of that year.]

(2) Four (4) percent of licensees who have completed their biennial renewals before September 1 of their renewal year shall be selected for audit through a random selection process.

(3) All licensees who complete their biennial renewals on or after September 1 of their renewal year shall be **audited** [subjected to the audit process].

(4) [(2)] A licensee who is the subject of an investigation pursuant to KRS 322.190 shall be **audited** [subjected to the audit process] [requirements of this section].

(5) [(3)] A licensee selected for audit shall provide the board with documentation as **established** [described] in Section 4[(5)] of this administrative regulation within thirty (30) days of the board's request.

(6) [(4)] If **continuing professional development** [the board disallows] credit **is disallowed** [due to the activity not meeting the requirements of Section 3(2) of this administrative regulation, or if the PDH units reported are less than thirty (30)], the licensee shall have **sixty (60)** [180] calendar days after notification to substantiate the original claim or earn other PDH units to meet the requirement.

(7) [(5)] Failure to comply with the CPD requirements shall **constitute** [be considered] a violation of KRS 322.180 **(3) [(3)] [subjecting the licensee to disciplinary action]**.

(8) [(6)] **If a licensee fails to comply with the CPD requirements, the licensee shall automatically be audited** [An audit resulting in a determination of noncompliance shall subject the licensee to an automatic audit for] the next reporting period and each subsequent reporting period until an audit results in a determination of compliance.

Section 9. Incorporation by Reference.

(1) **"Online Individual Renewal – Professional Engineer", October 2024, is incorporated by reference.**

(2) **This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.**

(3) **This material may also be obtained at kyboels.ky.gov**

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BOARDS AND COMMISSIONS

**Board of Interpreters for the Deaf and Hard of Hearing
(As Amended at ARRS, November 13, 2024)**

201 KAR 39:001. Definitions for 201 KAR Chapter 39.

RELATES TO: KRS 309.300(4), 309.301(2)(a), 309.304

STATUTORY AUTHORITY: KRS 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) requires the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations pertaining to the practice and licensure of a deaf or hearing [an] interpreter, a deaf or hearing [an] interpreter intern, or a deaf or hearing student in training. This administrative regulation establishes definitions for 201 KAR Chapter 39.

Section 1. Definitions.

(1) "American Sign Language Proficiency Interview (ASLPI) as administered by Gallaudet University" means the assessment that rates the ability to use American Sign Language grammar and vocabulary in most formal and informal conversations on social and work topics.

(2) "BEI" means the Board for Evaluation of Interpreters sponsored by the Department of Assistive and Rehabilitative Services in Texas, and the University of Arizona National Center for Interpretation Testing, Research, and Policy.

(3) "Board-approved supervisor [mentor]" means a licensed interpreter in this state or the resident of another state who meets the requirements established by 201 KAR 39:075 [.]

[(a)] [Meets the requirements for licensure in this state as set forth in KRS 309.300 to 390.319 and 201 KAR Chapter 39;]

[(b)] [Holds a valid certificate meeting the requirements for full licensure for a minimum of three (3) years prior to serving as a mentor; and]

[(c)] [Has completed forty-five (45) hours of continuing education since obtaining certification.]

(4) [**"Case manager" means a member of the board appointed by the chair of the board to review complaints and investigative reports, and to participate in informal proceedings to resolve a formal complaint.**]

[(5)] "CASLI" means the Center for Assessment of Sign Language Interpretation.

(5) [(6)] "CGKE" means the CASLI Generalist Knowledge Exam and is an exam administered by CASLI to both hearing and deaf candidates.

(6) [(7)] "CGPE-NIC" means the CASLI Generalist Performance Exam-NIC administered to hearing candidates after passing the CGKE.

(7) [(8)] "CGPE-CDI" means the CASLI Generalist Performance Exam-CDI administered to deaf candidates after passing the CGKE.

(8) [(9)] [(5)] "Certificate of Interpretation (CI) granted by RID" means a certificate indicating that the holder has demonstrated the ability to interpret between American Sign Language and spoken English in both sign-to-voice and voice-to-sign, without consideration of the interpreter's ability to transliterate.

(9) [(10)] [(6)] "Certificate of Transliteration (CT) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate between English-based sign language and spoken English in both sign-to-voice and voice-to-sign, without consideration of the transliterator's ability to interpret.

(10) [(11)] [(7)] "Certified Deaf Interpreter (CDI) granted by RID" means a certificate indicating the holder of this certificate is an interpreter who is deaf or hard of hearing, has passed comprehensive written and performance tests, and is recommended for a broad range of assignments where an interpreter who is deaf

or hard of hearing would be beneficial.

~~(11)(12)~~ [(8)] "Chair" means the chair or vice-chair of the board.

~~(12)(13)~~ [(9)] "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of a specified provision of KRS 309.300 to 309.319, 201 KAR Chapter 39, or any other state or federal statute or administrative regulation.

~~(13)(14)~~ [(10)] "Complaint" means any written or recorded videotaped allegation of misconduct by a licensed individual that might constitute a violation of KRS 309.300 to 309.319, 201 KAR Chapter 39, or any state or federal statute regulating the practice of interpreting.

~~(14)(15)~~ [(11)] "Complaint screening committee" means a committee consisting of three (3) persons on the board appointed by the chairman of the board to review complaints and investigative reports, and to participate in informal proceedings to resolve a formal complaint or recommend action to the board.

~~(15)(16)~~ [(12)] "Comprehensive Skills Certificate (CSC) granted by RID" means a certificate indicating that the holder has demonstrated the ability to interpret between American Sign Language and Spoken English and to transliterate between spoken English and an English-based sign language.

~~(16)(17)~~ [(13)] "Conditional Legal Interpreting Permit-Relay (CLIP-R) granted by RID" means that the holder of this conditional permit has completed a RID-recognized training program designed for interpreters and transliterators who work in legal settings, who are also deaf or hard of hearing, and who are recommended for a broad range of assignments in the legal setting.

~~(17)(18)~~ [(14)] "Cued Language Transliterator National Certification Examination (CLTNCE)" means the examination that which measures skills that satisfy the TECUnit minimum standard of both knowledge and skills in cued language transliteration and passage of which is required to recommend the individual for limited settings that require cued speech.

~~(18)(19)~~ [(15)] "Deaf Interpreter" means an individual who is deaf or hard of hearing and holds licensure or temporary licensure indicating the holder is an interpreter who is deaf or hard of hearing, has submitted proof of qualification to the board, and is recommended for a broad range of assignments where an interpreter who is deaf or hard of hearing would be beneficial.

~~(19)(20)~~ [(16)] "Deaf or Hard of Hearing Individuals" means individuals who have hearing disorders and who cannot hear and understand speech clearly through the ear alone with or without amplification, as verified by a licensed medical professional specializing in the provision of services to the deaf and hard of hearing.

~~(20)(21)~~ [(17)] "Education Interpreter Performance Assessment (EIPA) granted by Boys Town National Research Hospital" means a proficiency assessment for K-12 interpreting only, which indicates that the holder:

(a) Has demonstrated the ability to expressively interpret classroom content and discourse;

(b) Has demonstrated the ability to receptively interpret student sign language;

(c) Is not limited to any one sign language or system; and

(d) Is recommended to work with students who predominately use American Sign Language (ASL), Manually-Coded English (MCE), or Pidgin Sign English (PSE).

~~(21)(22)~~ [(18)] "Educational Certificate: K-12 (Ed: K-12) granted by RID" means that the holder has demonstrated:

(a) The ability to interpret classroom content, discourse, and student sign language; and

(b) Proficient expressive and receptive interpreting skills in all elementary and secondary school classroom settings.

~~(22)(23)~~ [(19)] "Formal complaint" means a formal administrative pleading authorized by the board that which:

(a) Sets forth charges against a licensed individual or other person; and

(b)

1. Commences a formal disciplinary proceeding pursuant to KRS Chapter 13B; or

2. Requests the court to take criminal or civil action.

~~(23)(24)~~ [(20)] "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

~~(24)(25)~~ [(21)] "Interpretation Certificate (IC) granted by RID" means that the holder has demonstrated the ability to interpret between American Sign Language and spoken English.

~~(25)(26)~~ [(22)] "Interpreting Certificate/Transliteration Certificate (IC/TC) granted by RID" means that the holder has demonstrated the ability to transliterate between English and a signed code for English and the ability to interpret between American Sign Language and spoken English.

~~(26)(27)~~ [(23)] "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint.

~~(27)(28)~~ [(24)] "Licensure year" means the period between July 1st of each year and June 30th of the following year or the time from which a license or temporary license was granted until the next June 30th.

~~(28)(29)~~ [(25)] "Master Comprehensive Skills Certificate (MCSC) granted by RID" means that the holder has demonstrated a higher standard of performance than holders of the CSC and is recommended for a broad range of interpreting and transliterating assignments.

~~(29)(30)~~ [(26)] "NAD" means the National Association of the Deaf.

~~(30)(31)~~ [(27)] "NAD Level III (Generalist)" means that the holder has demonstrated average voice-to-sign skills, good sign-to-voice skills, and the minimum competence needed to meet generally accepted interpreter standards, except that this individual is not qualified for all situations.

~~(31)(32)~~ [(28)] "NAD Level IV (Advanced)" means that the holder has demonstrated excellent voice-to-sign skills and above average sign-to-voice skills, and this individual is recommended for most situations.

~~(32)(33)~~ [(29)] "NAD Level V (Master)" means that the holder has demonstrated superior voice-to-sign skills and excellent sign-to-voice skills, and this individual is recommended for a broad range of interpreting assignments.

~~(33)(34)~~ [(30)] "National Interpreter Certification (NIC)" means a certification indicating that the holder has passed the NIC Knowledge exam [as administered by RID] and has scored within the standard range on the interview and performance portions of the test.

~~(34)(35)~~ [(31)] "National Interpreter Certification (NIC Advanced)" means a certification indicating that the holder has passed the NIC Knowledge exam [as administered by RID], scored within the standard range on the interview portion, and scored within the high range on the performance portion of the test.

~~(35)(36)~~ [(32)] "National Interpreter Certification Master (NIC Master)" means a certification indicating that the holder has passed the NIC Knowledge exam [as administered by RID] and has scored within the high range on both the interview and performance portions of the test.

~~(36)(37)~~ [(33)] "Nationally Recognized Organization" means an organization that owns or administers an interpreting skills assessment that has been adopted by law or administrative regulation by two (2) or more state agencies or state regulatory boards.

~~(37)(38)~~ "Nonresident interpreter" means a person who resides in another state and engages in the practice of interpreting for less than twenty (20) days per year without a Kentucky license.

~~(38)(39)~~ "Nonresident Interpreter Registry" means the registry required for tracking the number of days of service a nonresident interpreter provides in Kentucky that which is authorized without a license.

~~(39)(40)~~ [(34)] "One (1) continuing education hour" means sixty (60) contact minutes of participating in continuing education experiences.

~~(40)(41)~~ [(35)] "Oral Interpreting Certificate. Comprehensive (OIC:C) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and

intent of the speech and mouth movements of the person who is deaf or hard-of-hearing.

~~(41)(42)~~ [(36)] "Oral Interpreting Certificate. Spoken to Visible (OIC:S/V) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing.

~~(42)(43)~~ [(37)] "Oral Interpreting Certificate. Visible to Spoken (OIC:V/S) granted by RID" means a certificate indicating that the holder has demonstrated the ability to understand the speech and silent mouth movements of a person who is deaf or hard-of-hearing and to repeat the message for a hearing person.

~~(43)(44)~~ [(38)] "Oral Transliteration Certificate (OTC) granted by RID" means a certificate indicating that the holder has demonstrated ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf and hard-of-hearing.

~~(44)(45)~~ [(39)] "Reverse Skills Certificate (RSC) granted by RID" means a certificate indicating that the holder:

- (a) Is deaf or hard of hearing; and
- (b) Has demonstrated the ability to:

1. Interpret between American Sign Language and English-based sign language; or
2. Transliterate between spoken English and a signed code for English.

~~(45)(46)~~ [(40)] "Revoked" means the process by which the board terminates all rights and privileges associated with that license, in settlement of a disciplinary action initiated by the board.

~~(46)(47)~~ [(41)] "RID" means Registry of Interpreters for the Deaf, Inc.

~~(42)~~ [(42)] "Sign-Communication-Proficiency-Interview (SCPI) as developed by National Technical Institute for the Deaf" means the assessment that rates the ability to communicate expressively and receptively in a video-taped one-on-one interview or conversation with a trained interviewer.]

~~(47)(48)~~ [(43)] "Sign Language Proficiency Interview (SLPI) as developed by National Technical Institute for the Deaf" means the assessment that rates the ability to communicate expressively and receptively in a recorded video-taped one-on-one interview or conversation with a trained interviewer.

~~(48)(49)~~ [(44)] "Specialist Certificate: Legal (SC:L) granted by RID" means a certificate indicating that the holder has demonstrated specialized knowledge of legal settings and greater familiarity with language used in the legal system and is recommended for a broad range of assignments in the legal setting.

~~(49)(50)~~ [(45)] "Specialist Certificate: Performing Arts (SC:PA) granted by RID" means a certificate indicating that the holder has demonstrated specialized knowledge in performing arts interpretation and is recommended for a broad range of assignments in the performing arts setting.

~~(50)(51)~~ [(46)] "TECUnit" means the National Training, Evaluation, and Certification Unit.

~~(51)(52)~~ [(47)] "Transliteration Certificate (TC) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate between spoken English and a signed code for English.

~~(52)(53)~~ [(48)] "Voluntary surrender" means the process by which a person who holds a license issued by the board, knowingly and willingly, returns the license to the board, forfeiting all rights and privileges associated with that license, in settlement of a disciplinary action initiated by the board.

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BOARDS AND COMMISSIONS

Board of Interpreters for the Deaf and Hard of Hearing (As Amended at ARRS, November 13, 2024)

201 KAR 39:030. Application; qualifications for full licensure; and certification levels.

RELATES TO: KRS 309.304(1), 309.312(1)(b)

STATUTORY AUTHORITY: KRS 309.304(3), 309.312(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.312(1)(b) require the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate an administrative regulation establishing the requirements for an applicant for licensure as an interpreter for the deaf and hard of hearing. This administrative regulation establishes these requirements.

Section 1. Application. Each applicant for a full license shall:

- (1) Submit a completed Application for Full Licensure form to the board;
- (2) Pay the application and license fee as established set forth in 201 KAR 39:040; and
- (3) Submit proof of valid certification from one (1) of the following nationally recognized organizations:

- (a) At a level recognized by RID, with the exception of NAD III;
- (b) [At EIPA level 4.0 and passage of the EIPA written;]

~~(c)~~ [(e)] TECUnit;

~~(c)(d)~~ [(f)] BEI Advanced or better achieved within three (3) years of application;~~or~~

(d) Another current certification from a nationally recognized organization at the requisite level for sign language interpreters, oral interpreters, or cued speech transliterators as determined by the board; or

(e) Other certifications established as described in 201 KAR 39:080, if applying for licensure via reciprocity.

Section 2. Appeal of Denial of an Application for Licensure.

(1) If an applicant for Full Licensure is denied, the applicant shall have the right to appeal that preliminary determination.

(2) An appeal shall be:

- (a) Submitted to the board in writing by certified mail; and
- (b) Received by the board within thirty (30) days after the date

the applicant receives the notice of preliminary denial by certified mail or by email message delivered to the addresses stated on the Application for Licensure.

(3) The appeal of a preliminary denial of an Application for Licensure shall be held in accordance with the provisions of KRS Chapter 13B.

Section 3. Certification Level Requirements for EIPA. Individuals who are ~~these~~ fully licensed with an EIPA level 4.0 or 3.5 and passage of the EIPA written on or before January 1, 2025, shall remain entitled to full licensure if they continue to renew the license annually in compliance with all other licensure requirements. Failure to annually renew a license shall result in an applicant for reinstatement being required ~~to meet the requirement~~ shall have until July 1, 2030, to achieve a nationally recognized certification required by as identified in Section 1 of this administrative regulation.

Section 4. Incorporation by Reference. ~~The following material is incorporated by reference:~~

(1) "Application for Full Licensure", DPL-KBI-001, October ~~April~~ 2024 ~~December 2016~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, 914 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and on the board's Web site ~~website~~ at www.kbi.ky.gov.

FILED WITH LRC: November 13, 2024

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BOARDS AND COMMISSIONS
Board of Interpreters for the Deaf and Hard of Hearing
(As Amended at ARRS, November 13, 2024)

201 KAR 39:040. Fees.

RELATES TO: KRS 309.312(1)(a), (4), 309.306, 309.314(1), (2), (4), (6)
 STATUTORY AUTHORITY: KRS 309.304(3), 309.314(1), (2), (4)
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.314 require the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations to effectively carry out the provisions of KRS ~~309.300~~ ~~304.300~~ to 309.319 and to establish requirements concerning license fees. This administrative regulation establishes all fees charged by the board.

Section 1. Fees for Full Licensure.

(1) The application fee for initial licensure shall consist of the following:

- (a) A nonrefundable seventy-five (75)~~[fifty (50)]~~ dollar fee for general application; and
- (b) A \$150~~[\$125]~~ fee for initial licensure, which shall be refunded if:

- 1. The application is denied; and
- 2. The applicant submits a written request for the refund.

(2) The annual renewal fee shall be \$150~~[\$125]~~. Renewal fees shall not be refundable.

Section 2. Fees for Temporary Licensure.

(1) The application fee for initial temporary licensure shall be seventy-five (75)~~[fifty (50)]~~ dollars. This fee shall be nonrefundable.

(2) The initial licensure fee for a temporary license shall be \$150~~[\$125]~~. This fee shall be nonrefundable.~~[If the application for initial temporary licensure is denied, the initial licensure fee shall be refunded upon written request of the applicant.]~~

(3) The extension application fee to maintain or extend a temporary license shall be \$150~~[\$125]~~. This fee shall be nonrefundable.

Section 3. Late Renewal ~~[and Extension]~~ Fees.

(1) All licenses renewed during the sixty (60) day grace period shall require payment of a late renewal fee of \$100~~[sixty (60) dollars]~~ in addition to the current renewal fee established set forth in Section 1 ~~(2)~~ (3) of this administrative regulation.

~~(2) [All temporary licenses extended during the sixty (60)-day grace period shall pay a late fee of thirty-five (35) dollars in addition to the current extension application fee set forth in Section 2(3) of this administrative regulation.]~~

~~[(3)] Late renewal [and extension] fees shall be nonrefundable.~~

Section 4. Reinstatement Fee.

(1) The reinstatement fee for a license terminated pursuant to KRS 309.314(3) shall be \$150~~[\$125]~~, in addition to the current renewal or extension application fee as established set forth in Section 1 ~~(2)~~ (3) or 2(3) of this administrative regulation.

(2) The reinstatement fee shall be nonrefundable.

Section 5. Fee for a Reciprocal License.

- (1) The fee for a reciprocal license shall be \$250.
- (2) The reciprocal license fee shall be nonrefundable.

Section 6. Duplicate License Fee. The fee for a duplicate license shall be ten (10) dollars.

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BOARDS AND COMMISSIONS
Board of Interpreters for the Deaf and Hard of Hearing
(As Amended at ARRS, November 13, 2024)

201 KAR 39:050. Renewal and reinstatement of full licenses~~[, extension of temporary licenses and reinstatement]~~.

RELATES TO: KRS 309.304(5), 309.312, 309.314.

STATUTORY AUTHORITY: KRS 309.304(3), 309.312, 309.314
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3), 309.312, and 309.314 require the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations to carry out the provisions of KRS 309.300 to 309.319; to establish certification requirements for licensure; and to establish renewal and reinstatement fees. This administrative regulation establishes requirements for renewal of full licenses, ~~[extension of temporary licenses,]~~ and reinstatement.

Section 1. Renewal of Full Licenses. A person licensed as an interpreter shall renew that license annually, as required by KRS 309.314(1), by submitting ~~[the following]~~ to the board:

- (1) A completed Full License Renewal Application form;
- (2) The renewal fee as established in 201 KAR 39:040;
- (3) Proof of current certification of the licensee as an interpreter for the deaf and hard of hearing by a nationally recognized organization, as required by 201 KAR 39:030, Section 1(3); and
- (4) Documentation of completion of the continuing education requirement established in 201 KAR 39:090.

Section 2. Grace Period. If a full license is not renewed by July 1, it may be renewed during the following sixty (60) day period, in accordance with KRS 309.314, by:

- (1) Complying with the requirements established in Section 1 of this administrative regulation; and
- (2) Submitting the late renewal fee established in 201 KAR 39:040, Section 3.

Section 3.

[(1)] Reinstatement of full license. A license not renewed prior to the close of the sixty (60) day grace period, in accordance with KRS 309.314(4), may be reinstated upon:

- [(1)] [(a)] Payment of the renewal fee plus a reinstatement fee as established by 201 KAR 39:040, Section 4(1);
- [(2)] [(b)] Submission of a completed Reinstatement Application for Full License~~[Licensed Interpreters]~~ form to the board;
- [(3)] [(c)] Submission of evidence of completion of continuing education as required by 201 KAR 39:090, Section 9~~10~~; and
- [(4)] [(d)] Proof of current certification of the licensee as an interpreter for the deaf and hard of hearing by a nationally recognized organization, as required by 201 KAR 39:030, Section 1(3).

~~[(2)] [The board may reinstate a temporary license only if the licensee submits proof sufficient to the board of situations such as:]~~

- ~~[(a)] [Medical disability of the licensee;]~~
- ~~[(b)] [Illness of the licensee or an immediate family member; or]~~
- ~~[(c)] [Death or serious injury of an immediate family member;]~~
- ~~[(3)] [A request for reinstatement of a temporary license involving medical disability or illness shall be:]~~

- ~~[(a)] [Submitted by the person holding a license; and]~~
- ~~[(b)] [Accompanied by a verifying document signed by a licensed physician;]~~

~~[(4)] [To request reinstatement of a temporary license a licensee shall submit:]~~

- ~~[(a)] [Sufficient proof in support of the reinstatement as required by subsections (2) and (3) of this section;]~~
- ~~[(b)] [A completed Temporary License Reinstatement Application form;]~~

~~[(c)] [The appropriate fee set forth in 201 KAR 39:040;]~~

~~[(d)] [Proof of completion of the continuing education requirements in 201 KAR 39:090;]~~

~~[(e)] [A letter recommending the reinstatement and extension written by the Mentor(s) of Record for the previous licensure term which describes the progress achieved by the mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and]~~

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~~[(f)] [A revised plan of supervision for the upcoming licensure year.]~~

~~Section 4. [Extensions of Temporary Licenses.]~~

~~[(1)] [Temporary licenses shall expire on July 1 each year. To extend a temporary license, a request for extension shall be submitted by July 1 each year.]~~

~~[(2)] [To request an extension of a temporary license:]~~

~~[(a)] [A temporary licensee shall submit:]~~

~~[1.] [A completed Temporary License Extension Application form;]~~

~~[2.] [The appropriate fee set forth in 201 KAR 39:040;]~~

~~[3.] [Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;]~~

~~[4.] [A letter recommending extension written by the Mentor(s) of Record for the previous licensure term which describes the progress achieved by the mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and]~~

~~[5.] [A revised plan of supervision for the upcoming licensure year.]~~

~~[(b)] [A deaf or hard of hearing temporary licensee shall submit:]~~

~~[1.] [Upon applying for a first, second, or third extension:]~~

~~[a.] [A completed Temporary License Extension Application form;]~~

~~[b.] [The appropriate fee set forth in 201 KAR 39:040;]~~

~~[c.] [Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;]~~

~~[d.] [A letter recommending extension written by the Mentor(s) of Record which describes the progress achieved by the Mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and]~~

~~[e.] [A revised plan of supervision for the upcoming licensure year.]~~

~~[2.] [Upon applying for a fourth and subsequent extensions, a temporary license holder shall submit to the board documentation proving:]~~

~~[a.] [All requirements listed in paragraph (a) of this subsection; and]~~

~~[b.] [Proof of passage of the RID-CDI Knowledge Exam.]~~

~~[(3)] [The extensions of temporary licenses under this section shall be subject to the term limitations imposed by 201 KAR 39:070, Section 2(2).]~~

~~[Section 5.] Incorporation by Reference.~~

~~(1) The following material is incorporated by reference:~~

~~(a) "Full License Renewal Application", DPL-KBI-002[02], October/April 2024[June 2017]; and~~

~~(b) "Reinstatement Application for Full License[Licensed Interpreters]", DPL-KBI-003[03], October/April 2024[December 2016];~~

~~[(c)] ["Temporary License Reinstatement Application", December 2016; and]~~

~~[(d)] ["Temporary License Extension Application", June 2017.]~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street,[911 Leawood Drive,] Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and on the board's Web site at kbi.ky.gov.~~

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BOARDS AND COMMISSIONS

Board of Interpreters for the Deaf and Hard of Hearing
(As Amended at ARRS, November 13, 2024)

201 KAR 39:060. Reinstatement of full license subject to disciplinary action.

RELATES TO: KRS Chapter 13B, 309.318

STATUTORY AUTHORITY: KRS 309.304(3), 309.314

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) requires the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations to carry out the provisions of KRS 309.300 to 309.319[309.3189]. KRS 309.314 requires the board to promulgate administrative regulations concerning reinstatement and renewal fees, as well as evidence of completion of continuing education. This administrative regulation establishes the requirements for reinstatement of a license that has been the subject of disciplinary action by the board.

Section 1. Reinstatement of a Full License Revoked by Disciplinary Action of the Board.

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

(a) Submitting a completed Reinstatement Application for Full License [Reinstatement Application] form, incorporated by reference in 201 KAR 39:050;

(b) Paying the initial licensure fee as established[set forth] in 201 KAR 39:040 and the reinstatement fee as established[set forth] in 201 KAR 39:040;

(c) Submitting proof of qualification for licensure as required by[set forth in] 201 KAR 39:030; and

(d) Show evidence of completion of fifteen (15) hours of continuing education for each year since the date of revocation in accordance with the requirements established in 201 KAR 39:090.

(2)(a) The board shall review the reinstatement request and determine whether to reinstate the license, based on the provisions of this subsection.

(b) Based upon the information submitted, the board shall determine if the conditions for reinstatement established[listed] in KRS 309.318(5) have been met.

(c) If the board finds that the conditions for reinstatement have been met, the board[it] shall reinstate the license.

(d) If the board finds that the conditions for reinstatement have not been met, or the applicant failed to comply with the requirements of this administrative regulation, the board[it] shall refuse to reinstate the license. The applicant may then request, and the board shall grant, a hearing on the denial conducted pursuant to KRS Chapter 13B.

Section 2. Reinstatement of a Full License that which was Voluntarily Surrendered as if Revoked.

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

(a) Meeting of all of the requirements of Section 1(1) of this administrative regulation; and

(b) Providing documentation of the successful completion of all requirements established in the agreed order that resulted in the voluntary surrender of the license as if revoked.

(2) For a request for reinstatement of a full license voluntarily surrendered as if revoked, the board shall review the reinstatement request, make its determination, and provide for an appeal in accordance with Section 1(2)(a) through (d) of this administrative regulation.

~~[Section 3.] [Incorporation by Reference.]~~

~~[(1)] ["Reinstatement Application for Full License", DPL-KBI-03, April 2024,] ["License Reinstatement Application", 2011 form;] [is incorporated by reference.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the][Department of Professional Licensing, 500 Mero Street,][Kentucky Board of Interpreters for the Deaf and Hard of Hearing, 911 Leawood Drive,][Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.][and on the board's Web site at kbi.ky.gov.]~~

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BOARDS AND COMMISSIONS
Board of Interpreters for the Deaf and Hard of Hearing
(As Amended at ARRS, November 13, 2024)

201 KAR 39:070. Application and qualifications for temporary licensure and extensions.

RELATES TO: KRS Chapter 13B, 309.312(1)(b), (3)

STATUTORY AUTHORITY: KRS 309.304(3), 309.312

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.312(1)(b) and (3) require the board to promulgate an administrative regulation establishing the requirements for an applicant for temporary licensure as an interpreter for the deaf and hard of hearing. This administrative regulation establishes the requirements regarding temporary licensure, including extensions.

Section 1. Application for Temporary Licensure. Each applicant shall submit:

(1) A completed Application for Temporary Licensure ~~Form~~, as incorporated by reference in 201 KAR 39:030;

(2) The appropriate application and licensure fees as required by 201 KAR 39:040;

(3) A Plan of Supervision for Temporary License from a board-approved supervisor, pursuant to 201 KAR 39:075 ~~mentor~~;

(4) Proof documenting passage of the CGKE fundamentals of interpreting, the NIC, or EIPA Skills and Knowledge Assessment (Exam) for anyone working in the K-12 school setting, within the last five (5) years of application or another current certification from a nationally recognized organization at the requisite level for sign language interpreters, oral interpreters, or cued speech transliterators as determined by the board. If the interpreter is deaf or hard of hearing, forty (40) ~~eighteen (18)~~ hours of continuing education focused on general interpretation and ethics ~~CDI preparation~~ may be obtained in lieu of this requirement; and

(5) Proof of achieving or holding one (1) of the following:

(a) Valid NAD Level III as a currently certified member;

(b) ~~SCPI Advanced or better, within three (3) years of application;~~

~~[(e)] SLPI Advanced or better, within three (3) years of application;~~

~~[(c)] [(d)] ASLPI of three and one-half (3.5) or better, within three (3) years of application;~~

~~[(d)] [(e)] EIPA of three and one-half (3.5) or better, within three (3) years of application~~ ~~three (3.0) or better~~; or

~~[(e)] [(f)] BEI Basic or better, within three (3) years of application.~~

Section 2. Temporary Licensure Duration.

(1) An individual may hold temporary licensure for a maximum of five (5) consecutive licensure years from the date of initial issuance.

(2) An individual who is deaf or hard of hearing may hold temporary licensure for a maximum of ten (10) consecutive licensure years from the date of initial licensure.

(3) Any ~~reinstatement or~~ extension of a temporary license shall occur during the period established in subsection (1) or (2) of this section and pursuant to Section 4 of this administrative regulation ~~201 KAR 36:050, Section 3 and Section 4~~.

(4) The board may, in individual cases involving medical disability, illness, undue hardship, or active military service, or other extenuating circumstances that preclude the individual from completing the requirements within the timeframe set forth in subsections (1) and (2) of this section above, grant an extension of temporary licensure for one (1) additional one (1) year period for applicants who submit to the board:

(a) A written request for a one (1) time, one (1) year extension of the temporary licensure term established (identified) in subsection (1) and (2) of this section above, delivered to the board, by certified mail, no less than thirty (30) days before the expiration of the temporary license; and

(b) 1. Verifying documentation signed by a licensed physician or proper military personnel, if applicable; or

2. Documentation that provides evidence to support the extension.

~~[(4)] [The board shall, in individual cases involving medical disability, illness, undue hardship, or active military service, or other~~

~~extenuating circumstances that preclude the individual from completing the requirements, grant an extension of temporary licensure for an additional one (1) year for applicants who submit to the board;~~

~~[(a)] [A written request for an extension of the temporary licensure term delivered to the board, by certified mail, no less than thirty (30) days before the expiration of the temporary license; and]~~

~~[(b)] [(1)] [Verifying documentation signed by a licensed physician or proper military personnel, if applicable; or]~~

~~[2.] [Documentation that provides evidence to support the extension.]~~

Section 3. Supervision Requirements.

~~[(1)] Each applicant for a temporary license shall be trained and supervised by a board-approved supervisor and shall meet the applicable requirements of 201 KAR 39:075.~~ ~~mentor.~~

~~[(2)] [During the period of training and supervision the mentor shall meet with the licensee on a quarterly basis. One (1) of these meetings shall be face to face basis with each person being mentored. The remaining meetings may be through the use of video or video teleconferencing or any other method outlined in the approved plan of supervision.]~~

~~[(3)] [A mentor shall contract with no more than twenty (20) temporary licensees during a calendar year.]~~

Section 4. Extensions of Temporary Licenses.

(1) Temporary licenses shall expire on July 1 each year. To extend a temporary license, a request for extension shall be submitted by July 1 each year. An applicant whose temporary license has expired may apply for an extension during the initial five (5) year period for a hearing interpreter, or the initial ten (10) year period for a deaf interpreter, from the date the temporary license was issued. The board may issue the extension for good cause shown as determined by board, and the duration of the extended temporary license shall not exceed the duration of the initial temporary license.

(2) To request an extension of a temporary license a temporary licensee shall submit:

(a) A completed Temporary License Extension Application form;

(b) The appropriate fee established (set forth) in 201 KAR 39:040;

(c) Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;

(d) A letter recommending extension written by the board-approved supervisor for the previous licensure term that (which) describes the progress achieved by the supervisee; and

(e) A revised plan of supervision for the upcoming licensure year.

(3) The extensions of temporary licenses under this section shall be subject to the term limitations imposed by Section 2(1) and (2) of this administrative regulation.

(4) The board may extend the use of the temporary license to an applicant who has submitted a Temporary License Extension Application (an Application for Extension) on or before the July 1 deadline for a period not to exceed sixty (60) days. The board shall review the application for extension prior to the expiration of the sixty (60) day period.

Section 5. Appeal of Denial of an Application for Temporary Licensure.

(1) If an Application for Temporary Licensure is denied, the applicant shall have the right to appeal that preliminary determination.

(2) An appeal shall be:

(a) Submitted to the board in writing by certified mail; and

(b) Received by the board within thirty (30) days after the date the applicant receives the notice of preliminary denial by certified mail or by email message delivered to the addresses stated on the Application for Licensure.

(3) The appeal of a preliminary denial of an Application for Temporary Licensure shall be held in accordance with the provisions of KRS Chapter 13B.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Temporary Licensure", DPL-KBI-004[04], April 2024[~~is incorporated by reference~~].

(b)(2) "Plan of Supervision for Temporary License", DPL-KBI-005[05], April 2024[40/2014]; ~~and, is incorporated by reference~~.

(c)(3) "Temporary License Extension Application", DPL-KBI-006[06], October[April] 2024.

(2)(4) [(2)] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street,[911 Leawood Drive,] Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. ~~and can be found on the board Web site[website] at kbi.ky.gov.~~

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BOARDS AND COMMISSIONS

Board of Interpreters for the Deaf and Hard of Hearing (As Amended at ARRS, November 13, 2024)

201 KAR 39:075. Supervision.

RELATES TO: KRS 309.304(3), 309.312(3), 309.316(3)

STATUTORY AUTHORITY: KRS 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) requires the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate necessary and reasonable administrative regulations to effectively carry out and enforce the provisions of KRS 309.300 to 309.319, pertaining to the practice and licensure of a deaf or hearing interpreter. This administrative regulation establishes provisions[regulations] relating to the supervision of temporary licensees, or a licensee under discipline with supervisory conditions, as referenced in KRS 309.312(3) and 309.316(3).

Section 1. Qualification for Supervision Status. To qualify as a board-approved supervisor of record for a temporary licensee or a licensee under discipline, a licensed interpreter shall:

(1) Complete the Application for Board-Approved Supervisor[an application to become a board-approved supervisor];

(2) Meet the requirements for licensure in Kentucky as established[set forth] in KRS 309.300 to 309.319 and 201 KAR Chapter 39;

(3) Hold a valid certificate meeting the requirements for full licensure for a minimum of three (3) years prior to application to serve as a supervisor, with the exception of those who are fully licensed who do not have a nationally recognized certification and who shall not be eligible to serve as a supervisor;

(4) Have completed forty-five (45) hours of continuing education since obtaining certification; and

(5) Be approved by the board [as a board-approved supervisor] pursuant to the requirements of this section.

Section 2. Supervision Requirements.

(1) General obligations.

(a) An interpreter who has applied and been approved as a supervisor by the board as required in Section 1 of this administrative regulation, may[shall] supervise a temporary licensee[license] or a licensee under discipline.

(b) During the period of supervision, the board-approved supervisor shall meet with the temporary licensee or licensee under discipline on a quarterly basis.

1. One (1) of the meetings shall be face-to-face between the supervisor and temporary licensee or the licensee under discipline.

2. The remaining meetings may be through the use of video or video conferencing or any other method outlined in the approved plan of supervision.

(c) The board-approved supervisor shall direct and oversee each supervisee who holds a temporary licensee or who is a licensee under discipline with supervisory conditions imposed as the result of an

investigation of a complaint, taking responsibility for the professional interpreting practice of the supervisee.

(d) The supervisor shall have access to ~~[, and shall review,]~~ the supervisee's documentation, and when needed:

1. Review the supervisee's documentation and records;

2. View the supervisee's services in face-to-face format, recorded format, or both, if available; and

3. Communicate with the supervisee's clients, if applicable, regarding the supervisee's performance.

(e) The supervisor shall use observations from the supervisee's documentation, client sessions, and communications with any third parties, including the administrative supervisor, if applicable, to inform supervision and shall document these observations in his or her supervisory notes.

(2) Extension of Temporary License. The board-approved supervisor shall provide the board with the following information upon the request by a supervisee applying for extension of a temporary license:

(a) A letter recommending extension that[which] describes the progress achieved by the supervisee; and

(b) For supervision of a temporary licensee, a revised plan of supervision for the upcoming licensure year.

Section 3. Plan of Supervision.

(1) A temporary licensee shall enter into a written plan of supervision with an approved supervisor that[which] shall be submitted with the application for temporary licensure as provided in 201 KAR 39:070. The plan of supervision shall contain:

(a) The name and address of the supervisee;

(b) The name, address, license or certification number, and number of years of practice of the supervisor of record;

(c) The name, address, license or certification number, and number of years of practice of other supervisors;

(d) The nature, duration, and frequency of the supervision, including the:

1. Number of hours of supervision per quarter;

2. Number of hours of individual supervision;

3. Methodology for transmission of information; and

4. Number of hours of face-to-face supervision;

(e) The conditions or procedures for termination of the supervision;

(f) A statement that:

1. The supervisor of record understands that the supervisor shall be held accountable to the board for the interpreting services given to the supervisee's clients; and

2. The supervisor of record meets the criteria established in Section 1 of this administrative regulation; and

(g) The signatures of both the supervisor and the supervisee.

(2) If a supervisee changes his or her supervisor of record, the supervisee shall submit a new plan of supervision, which shall include[sets forth] the information required by this section.

(3) The supervisee may begin the practice of interpreting services upon the board's approval of the plan.

(4) A supervisee shall not continue to practice interpreting services if:

(a) The conditions for supervision established[set forth] in the plan of supervision are not followed; or

(b) The plan of supervision is terminated for any reason other than the extenuating circumstances as authorized by the board.

(5) If the terms of the plan of supervision are not being met by the supervisee, the supervisor shall immediately notify this board in writing.

Section 4. A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than six (6) persons obtaining experience for licensure at the same time. Any supervisor with more than six (6) supervisees on or before January 1, 2025, shall reduce the number of supervisees to six (6) or less through attrition and shall not accept new supervisees until the supervisor has fewer than six (6) supervisees of record.

Section 5. A supervisor who is placed under discipline shall be ineligible to act as a supervisor and shall not become eligible to apply

for reinstatement as a supervisor earlier than two (2) years following the completion of any disciplinary action, including completion of any suspension or probationary period. Further, a board-approved supervision training shall be required prior to reinstatement.

Section 6. Incorporation by Reference.

(1) "Application for Board-Approved Supervisor", DPL-KBI-007, April 2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Interpreters for the Deaf and Hard of Hearing, 500 Mero St, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:00 p.m. This material is also available on the board's Web site at www.kbi.ky.gov.

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

BOARDS AND COMMISSIONS

**Board of Interpreters for the Deaf and Hard of Hearing
(As Amended at ARRS, November 13, 2024)**

201 KAR 39:090. Continuing education unit requirements.

RELATES TO: KRS 309.304(5), 309.318

STATUTORY AUTHORITY: KRS 309.304(3), 309.314(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.314(7) authorizes the board to promulgate an administrative regulation that requires interpreters who apply for renewal or reinstatement to show evidence of completion of continuing education. This administrative regulation establishes/delineates the requirements for continuing education units and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours Mandatory for Full Licensure; Computation of Accrual.

(1) A person who is licensed as an interpreter shall have earned a minimum of fifteen (15) continuing education unit hours during each licensure period.~~total of fifteen (15) hours of approved continuing education during the compliance period, prior to renewal of his or her license for the next licensure period.~~

(2) A minimum of half of the fifteen (15) hours shall be from any of the following sources, alone or in combination:

- (a) Alexander Graham Bell Association of the Deaf;
- (b) American Sign Language Teacher Association;
- (c) National Association of the Deaf;
- (d) National Educational Interpreters Conference;
- (e) Registry of Interpreters for the Deaf - Certificate Maintenance Program; or
- (f) Registry of Interpreters for the Deaf - Associate Continuing Education Training.

(3) ~~A minimum of fifteen (15) continuing education hours shall be accrued by each licensee during the licensure period for renewal for the following year.~~

~~[(4)] A minimum of three (3) of the fifteen (15)[total] continuing education unit hours shall be related to ethics. **To be approved:**~~

~~**(a) The program title shall contain the word "ethics"; or**~~

~~**(b) The licensee shall submit the course description for the board to review to determine if/whether the program relates to the code of ethics for interpreters.**~~

Section 2. Accrual of Continuing Education Unit Hours Mandatory for Temporary Licensure; Computation of Accrual.

(1) A person who holds a temporary license as an interpreter shall have earned a minimum[total] of eighteen (18) hours of approved continuing education units during each~~the compliance period, prior to renewal or extension of his or her license for the next~~ licensure period.

(2) A minimum of seven and one-half (7.5) of the eighteen (18) hours shall be from any of the following sources, alone or in combination;

- (a) Alexander Graham Bell Association for the Deaf;

- (b) American Sign Language Teacher Association;
- (c) National Association of the Deaf;
- (d) National Educational Interpreters Conference;
- (e) Registry of Interpreters for the Deaf - Certificated Maintenance Program; or

(f) Registry of Interpreters for the Deaf - Associate Continuing Education Training.

(3) A minimum of three (3) ~~of the eighteen (18)[total]~~ continuing education unit hours shall be related to ethics. **To be approved:**

(a) The program title shall contain the word "ethics"; or

(b) The licensee shall submit the course description for the board to review to determine if/whether the program relates to the code of ethics for interpreters.

Section 3. Methods of Acquiring Continuing Education Unit Hours. Continuing education unit hours applicable to the renewal of the license shall be directly related to the professional growth and development of an interpreter. The hours shall be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of interpreting and shall be approved without further review by the board:

(a) A program sponsored or approved by the:

- 1. Alexander Graham Bell Association of the Deaf;
- 2. American Sign Language Teacher Association;
- 3. National Association of the Deaf;~~or~~
- 4. Registry of Interpreters for the Deaf; or
- 5. National Association of Interpreters in Education; or

(b) An academic course offered by an accredited postsecondary institution that is directly related to interpreting. Credit shall only be granted for grades of "C" or above.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if the program is relevant and therefore subsequently approved by the board:

(a) Relevant programs, including asynchronous and synchronous learning either in-person or virtual~~home study courses and in-service~~ training provided by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed three (3) hours of continuing education credits. Credit shall not be issued for repeated presentation of the same course.

(c) Authoring an article in a relevant, professionally-recognized, or juried publication. Credit shall not be granted for an article unless the article was published within the one (1) year period immediately preceding the renewal date. A licensee shall earn three (3) hours of continuing education credit toward the hours required for renewal. No more than one (1) publication shall be counted during a renewal period.

(d) A general education course, elective course, or a course designed to meet degree requirements offered by an accredited postsecondary institution. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals 10 continuing education hours. Credit shall only be granted for grades of "C" or above.

Section 4. Procedures for Preapproval of Continuing Education Unit Sponsors and Programs.

(1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall complete and submit the Application for Continuing Education Program Unit Approval form to the board at least sixty (60) days in advance of the commencement of the program, stating the following:

- (a) A published course or similar description containing educational objectives;
- (b) Names and qualifications of the instructors;
- (c) A copy of the program agenda indicating hours of instruction, coffee and lunch breaks;~~and~~

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(d) Number of continuing education unit hours being requested~~[offered]~~; and

(e) A copy of the evaluation.

(2) A continuing education activity shall be approved~~[qualified for approval]~~ if the board determines the activity being offered:

(a) Is an organized program of learning;

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

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

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

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

Section 5. Responsibilities and Reporting Requirements of Licensees. A licensee shall be responsible for obtaining the required continuing education unit hours. A licensee shall: He shall identify his own continuing education needs, take the initiative in seeking continuing education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding a license shall:

~~[(1)] [Select approved activities by which to earn continuing education hours;]~~

~~[(2)] [Submit to the board when applicable a request for approval for continuing education activities not approved by the board as set forth in Section 7 of this administrative regulation;]~~

~~[(1)](3)] Maintain records of continuing education unit hours.~~

(a) Each licensee shall maintain all documentation verifying successful completion of continuing education unit hours for a period of two (2) years from the date of renewal.

(b) During each licensure renewal period, up to fifteen (15) percent of all licensees, chosen at random, shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education unit hours for the current renewal period.

(c) Verification of continuing education unit hours shall not be otherwise reported to the board; and

~~[(4)] [Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsor, or less formal evidence including written summaries of experience that are not otherwise formally or officially documented in any way. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and]~~

(2)](5)] Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 309.318(1)(e) and may result in the refusal to renew, suspension, or revocation of the licensure.

Section 6. Procedures for Approval of Continuing Education Programs. A program~~[course;]~~ that~~[which]~~ has not been preapproved by the board~~;~~ may be used for continuing education units if the licensee submits the program for board approval~~[is secured from the board for the course]~~. In order for the board to adequately review a program for approval, the following information shall be submitted:

(1) A published course or similar description containing educational objectives~~;~~ and

(2) Names and qualifications of the instructors~~;~~

(3) A copy of the program agenda indicating hours of instruction, coffee and lunch breaks;

(4) Number of continuing education hours being requested; and

(5) A copy of the course evaluation.

Section 7. Carry Over of Continuing Education Unit Hours. A licensee with a full license may carry over six (6) continuing education unit hours earned in excess of those required under Section 1 of this administrative regulation for one (1) renewal period, after which time they shall expire. All carry-over hours shall comply

with the requirements of Sections 1 through 3 of this administrative regulation.

Section 8. Board to Approve Continuing Education Unit Hours; Appeal when Approval Denied.

(1) In the event of a denial, in whole or in part, of any application for approval of continuing education hours, the licensee shall have the right to request reconsideration by the board of its decision.

(2) The request shall be in writing, specifically stating the reasons for reconsideration, and shall be received by the board within thirty (30) days of the board's decision denying approval of continuing education hours.

Section 9. ~~[Waiver or Extensions of Continuing Education. All requests for waiver or extension shall accompany the License Renewal Application Form.]~~

~~[(1)] [Upon written request, the board shall consider whether to grant a waiver of continuing education requirements or an extension of time within which to fulfill the requirements, in the following cases:]~~

~~[(a)] [Medical disability of the licensee;]~~

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

~~[(c)] [Death or serious injury of an immediate family member; or]~~

~~[(d)] [For good cause shown.]~~

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

~~[(a)] [Submitted by the person holding a license; and]~~

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

~~[(3)] [A request for a waiver or extension of the continuing education requirements applies only to the current licensure year.]~~

~~[(a)] [Subsequent requests for waiver or extension of the continuing education requirements shall be made at the time of licensure renewal.]~~

~~[(b)] [There shall be no limit to the number of waivers or extensions that the board may grant, as long as the applicant meets the requirements set forth in subsections (1) and (2) of this section.]~~

~~[Section 10.] Continuing Education Requirements for Reinstatement of License.~~

(1) A person requesting reinstatement of licensure shall submit evidence of completion of required hours of continuing education units within the twelve (12) month period immediately preceding the date on which the request for reinstatement is submitted to the board.

(2) If the person seeking reinstatement does not meet the requirements established in subsection (1) of this section, the board may conditionally reinstate licensure, requiring the applicant to obtain required hours of continuing education units within six (6) months of the date on which licensure is reinstated.

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

Section 10.~~[Section 11.]~~ Incorporation by Reference.

(1) "Application for Continuing Education Unit Program Approval", DPL-KBI-008 08, April 2024~~[4/2014]~~, form is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street~~[Division of Occupations and Professions, 911 Leawood Drive,]~~ Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or found on the board's Web site~~[website]~~ at www.kbi.ky.gov.

FILED WITH LRC: November 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, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov.

BOARDS AND COMMISSIONS
Board of Interpreters for the Deaf and Hard of Hearing
(As Amended at ARRS, November 13, 2024)

201 KAR 39:100. Complaint procedure.

RELATES TO: KRS Chapter 13B, 309.301(1), 309.304(7), 309.316, 309.318, 309.319

STATUTORY AUTHORITY: KRS 309.304(3), 309.316(2), 309.318

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.316(2) requires~~authorizes~~ the board to establish procedures for receiving and investigating complaints. KRS 309.318 authorizes the board to take~~delineates the causes for which~~ disciplinary action ~~may be taken~~ against a licensee. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Receipt of Complaints.

(1) A complaint:

(a) May be submitted by an:

1. Individual;
2. Organization; or
3. Entity.~~[-]~~

(b) Shall:

1. Be in writing or contained on a videotape or digital media; and
2. Include the signature or stated name, address, and telephone or videophone number of the person submitting the complaint; and

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

(2) Upon receipt of the complaint, a copy of the complaint shall be sent to the licensee named in the complaint along with a request for the licensee's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written, videotaped, or other digital media response.

Section 2. Initial Review.

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

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

- (a) Dismiss the complaint; and
- (b) Notify the complainant and licensee of the board's decision.

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

- (a) Authorize an investigation into the matter; and
- (b) Order a report to be made to the ~~[case manager or the]~~complaint screening committee at the earliest opportunity.

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

(1) Upon completion of the formal investigation, the investigator shall submit a written report to ~~[the case manager or]~~the complaint screening committee of the facts regarding the complaint. The ~~[case manager or the]~~complaint screening committee shall review the investigative report and make a recommendation to the board. The board shall determine ~~if whether~~ there has been a prima facie violation of KRS 309.300 through to 309.319 or 201 KAR Chapter 39, the administrative regulations promulgated thereunder and if a formal complaint shall~~should~~ be filed.

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

- (a) Dismiss the complaint; and
- (b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a violation has occurred but is not serious, the board may issue a written admonishment to the licensee in accordance with KRS 309.316(4).

(4) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the board

attorney in conjunction with ~~[the case manager or]~~the complaint screening committee shall prepare a formal complaint that~~which~~ states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chair~~chairman~~ and served upon the individual as required by KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 309.301(1), the board~~it~~ shall:

(a) Order the individual to cease and desist from further violations of KRS 309.301(1);

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 309.301(1) with a request that appropriate action be taken under KRS 309.319; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 309.301(1) pursuant to KRS 309.304(7).

Section 4. Settlement by Informal Proceedings.

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

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

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

Section 5. Notice and Service of Process. A notice required by KRS 309.300 through to 309.319 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 6. Notification. The board shall make public:

(1) Its final order in a disciplinary action pursuant to~~under~~ KRS 309.316(3); and

(2) An action to restrain or enjoin a violation of KRS 309.301(1).

Section 7. Incorporation by Reference.

(1) "Complaint Form", DPL-KBI-009, October~~April~~ 2024,~~[2011,]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, [Division of Occupations and Professions, 911 Leawood Drive,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and found on the board's Web site at www.kbi.ky.gov.

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BOARDS AND COMMISSIONS
Board of Interpreters for the Deaf and Hard of Hearing
(As Amended at ARRS, November 13, 2024)

201 KAR 39:120. Code of ethics.

RELATES TO: KRS 309.304(3), 309.318(1)(e), (f), 620.030

STATUTORY AUTHORITY: KRS 309.304(3), 309.318(1)~~(e), (f)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.318(1)(e) and (f) authorize~~authorizes~~ the board to take disciplinary action against a licensee who violates any state statute or requirement of 201 KAR Chapter 39~~administrative regulation governing the practice of interpreting~~ or who violates the code of ethics, known as the Professional Code of Conduct of the licensee's national certifying organization or organizations. This administrative regulation establishes the code of ethics in accordance with KRS 309.318(1)(f).

Section 1. A licensee~~license~~ shall abide by the following standards of professional and ethical conduct:

(1) A licensee shall keep all ~~service-related~~~~[assignment-related]~~ information strictly confidential. From the moment of accepting the ~~service~~~~[assignment]~~, the ~~licensee~~~~[interpreter]~~ holds a trustworthy relationship with the consumer, in which the ~~licensee~~ **shall be**~~interpreter~~~~[is]~~ bound to confidentiality.

(a) All information ~~[obtained from the interpreter service]~~ shall be considered confidential. This **shall apply**~~[applies]~~ whether the ~~licensee~~~~[interpreter]~~ accepts or declines the ~~request for services~~~~[assignment]~~.

(b) All information about a consumer that is received from other ~~licensees~~~~[interpreters]~~ shall be considered confidential and shall be exchanged in a manner **that/which** protects both the consumer and the ~~service~~~~[assignment]~~.

(c) The ~~licensee~~~~[interpreter]~~ shall comply with the requirements of KRS 620.030 by reporting to the proper authorities the dependency, neglect, or abuse of a child if the ~~licensee~~~~[interpreter]~~ reasonably believes that the dependency, neglect, or abuse of a child is ongoing or has occurred.

(2) A licensee shall faithfully convey the content and spirit of the speaker using language most readily understood by the persons whom they serve. Every interpretation shall be faithful to the message of the source text. A faithful interpretation should not be confused with a literal interpretation. The fidelity of an interpretation includes an adaptation to make the form, the tone, and the deeper meaning of the source text felt in the target language and culture.

(3) A licensee shall possess the knowledge and skills to support accurate and appropriate interpretation. A licensee works in a variety of settings and with a wide range of consumers and therefore shall be adept at meeting the linguistic needs of consumers, the cultural dynamics of each situation, and the spirit and content of the discourse.

(4) A licensee shall not counsel, advise, or interject personal opinions.

(a) A ~~licensee~~~~[An interpreter]~~ shall remain neutral, impartial, and objective. If the ~~licensee~~ ~~is~~~~[interpreter finds himself or herself]~~ unable to put aside personal biases or reactions **that/which** threaten impartiality, the ~~licensee~~ **shall be**~~interpreter~~~~[is]~~ under an obligation to examine options and take actions to remedy the situation.

(b) A ~~licensee~~~~[An interpreter]~~ shall refrain from altering a message for political, religious, moral, or philosophical reasons, or for any other biased or subjective considerations.

(c) The ~~licensee~~~~[interpreter]~~ shall advise the consumer that ~~the licensee~~~~[he or she]~~ assumes a position of neutrality in the relationship between all parties during an interpreting ~~service~~~~[assignment]~~. The ~~licensee~~~~[interpreter]~~ shall not become personally involved in ~~[regards to]~~ the issues or persons present at the interpreting ~~service~~~~[assignment]~~.

(5) ~~In accepting~~~~[A licensee shall accept]~~ a request for services, ~~a licensee shall use~~~~[assignments]~~~~[using]~~ discretion with regard to skill, setting, and the consumers involved.

(a) Licensees shall approach requests for services with respect and cultural sensitivity towards all participants.

(b) ~~If/When~~ a request for services demands an additional deaf or hearing licensee, a licensee shall not accept the request, or continue with the services if it has been initially accepted, until the additional deaf or hearing licensee is included in the professional interpreting team.

~~[(a)] [An interpreter shall recognize the need for a deaf interpreter and advocate his or her participation as part of the interpreting team. A deaf interpreter may be necessary if working with individuals who use regional sign dialects, nonstandard signs, foreign sign languages, and those with emerging language use.]~~

~~[(c)](b)] A licensee~~~~[An interpreter]~~ shall ~~[generally]~~ refrain from accepting a request for services ~~in which~~ providing services in situations ~~[where]~~ family members ~~or~~ personal or business associations may affect impartiality.

1. In an emergency situation, a ~~licensee~~~~[an interpreter]~~ may provide services for family members, friends, or business associates, ~~and the licensee~~. In those situations, ~~the interpreter~~ shall guard against allowing ~~[his or her]~~ personal involvement to affect ~~the licensee's~~~~[his or her]~~ ability to interpret impartially.

2. If the ~~licensee~~~~[interpreter]~~ ~~[finds that he or she can no longer]~~ is unable to be impartial, the ~~licensee~~~~[interpreter]~~ shall inform the

parties involved and may assist in finding another ~~licensee~~~~[interpreter]~~.

(6) Prior to accepting an engagement for services, a licensee shall advise the party responsible for payment of the services to be provided of the amount of compensation to be charged for the services.

(7) A licensee shall not advertise ~~the licensee's~~~~[his or her]~~ services in a false, deceptive, or misleading manner.

(8) A licensee shall function in a manner appropriate to the situation. A ~~licensee~~~~[An interpreter]~~ shall ~~[attempt to]~~ become familiar with the anticipated discussion topic, type of activity, level of formality, expected behaviors, and possible presentational materials prior to commencement of the ~~service~~~~[assignment]~~.

~~[(9)] [Each licensee shall strictly adhere to the parameters set forth by RID specific to the certification or certifications awarded which address appropriate conduct for a particular situation and setting.]~~

~~[Section 2.] [In addition to the standards delineated in Section 1 of this administrative regulation, a licensee shall abide by the code of ethics or code of professional conduct for his or her respective certification or certifications.]~~

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BOARDS AND COMMISSIONS

Board of Interpreters for the Deaf and Hard of Hearing (As Amended at ARRS, November 13, 2024)

201 KAR 39:130. Registration for nonresident interpreters.

RELATES TO: KRS 309.301(2)(a)

STATUTORY AUTHORITY: KRS 309.301(2)(a), 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.301(2)(a) **authorizes the board to exempt from licensure**~~[provides the provisions of KRS 309.300 to 309.319 shall not apply to]~~ nonresident interpreters working in the Commonwealth less than twenty (20) days per year. **[Nonresident interpreters are exempt from licensure so long as they provide interpreting services in this state for less than twenty (20) days per year.]** This **administrative** regulation **establishes requirements applicable to**~~[is necessary to ensure]~~ nonresident interpreting services~~[do not exceed the number of days authorized by statute]~~.

Section 1. Registration **and Reporting**.

(1) A nonresident interpreter providing interpreting services in ~~Kentucky~~~~[the state]~~ shall:

(a) Register with the Board of Interpreters for the Deaf and Hard of Hearing **for entry into the Nonresident Interpreter Registry** before providing nonresident interpreting services using the **Registration of Nonresident Interpreter** form~~[provided in Section 2(1) of this administrative regulation]~~; and

(b) Report each date of nonresident interpreting service ~~[being]~~ provided in the state to the Board of Interpreters for the Deaf and Hard of Hearing using the **Report of Service by Nonresident Interpreter** form **within ten (10) business days**~~[provided in Section 2 of this administrative regulation]~~.

(2) For ~~the purpose~~~~[purposes]~~ of **meeting the registration and reporting requirements established in subsection (1) of this section**~~[the duty to register and report]~~, each partial day of interpreting by a nonresident interpreter shall be counted as a full day.

(3) **License-exempt** nonresident interpreting services shall be **provided** less than twenty (20) days per calendar year.

(4) A registration number shall be provided by the board and the nonresident interpreter shall include the registration number on ~~the~~ **required**~~[any]~~ report of services for purposes of record keeping.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form "Registration of Nonresident Interpreter", DPL-KBI-010, ~~October~~April 2024; and

(b) Form "Report of Service by Nonresident Interpreter", DPL-KBI-011, ~~October~~April 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Interpreters for the Deaf and Hard of Hearing, 500 Mero St., Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and on the board's Web site at www.kbi.ky.gov.

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EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(As Amended at ARRS, November 13, 2024)

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 (1) 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

(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 and ~~[A]~~ board relations;

8. Goal setting and ~~[A]~~ 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.

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EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 13, 2024)

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 authorizes[provides ~~that~~] the Kentucky Board of Education to[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 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); and

3. Approximate acreage or area;

(b) A declaration assuring that the disposal shall not affect the integrity or usefulness of property crucial to the educational needs of the district; and

(c) A 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 (1) of the following methods to secure the fair market value with assurance that the district shall/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 *if 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) A 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;

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2. Last official reported name through the District and School Collection Repository (DASCR), if applicable; and

3. Approximate acreage or area;

(b) A declaration assuring that the disposal ~~shall will~~ not affect the integrity or usefulness of property crucial to the educational needs of the district;

(c) The appraisal; and

(d) A 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 a 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) An initial, signed BG-1 identifying the:

1. Address or general legal property description; and

2. Approximate acreage or area.

(b) A declaration assuring that the disposal ~~shall 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

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 shall 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) A 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) An initial, signed BG-1 identifying the:

1. Address or general legal property description; and

2. Approximate floor area or acreage.

(b) A declaration assuring that the disposal ~~shall will~~ not affect the integrity or usefulness of property crucial to the educational needs of the district;

(c) An 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) A 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, if should the Kentucky Department of Education disapproves 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; and

(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>

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EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(As Amended at ARRS, November 13, 2024)

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 ~~shall 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~~ receive ~~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 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;]~~

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~~[(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.~~

~~[(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 158.141.]~~

~~(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 **subsection (4) of 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.(e)~~ 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(1)(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>.

FILED WITH LRC: November 13, 2024

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EDUCATION AND LABOR CABINET

Board of Education

Department of Education

(As Amended at ARRS, November 13, 2024)

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.

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 ~~who 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, ~~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 shall 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) An 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;

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 administrative 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

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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, ~~the~~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 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~~[to]~~ 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

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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.

(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 ~~who~~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.

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(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.

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EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 13, 2024)

**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 shall 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].~~

(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.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at IJC on Health Services, November 18, 2024)

902 KAR 45:001. Definitions for hemp-derived cannabinoid products.

RELATES TO: KRS Chapter 13B, 217.015, 217.025, 217.035, 217.037, 217.039, 260.850, 438.305(4), 2023 Ky Acts ch. 78 ~~[7]~~ C.F.R. 990.1

STATUTORY AUTHORITY: KRS 217.125, 217.135

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 through 217.215. KRS 217.135 authorizes the secretary to establish food standards by administrative regulation including a reasonable definition, standard of identity, and designation of optional ingredients that shall be named on the label. This administrative regulation establishes the definitions applicable to hemp-derived cannabinoid products.

Section 1. Definitions.

(1) "Adult-use cannabinoid" means a product with intoxicating properties that changes the function of the nervous system and results in alterations of perception, cognition, or behavior.

(2) "Approved source" means:

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

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

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

- (3) "Cabinet" is defined by KRS 217.015(3).
- (4) "Cannabidiol" or "CBD" is defined by KRS 217.039(1)(a).
- (5) "Cannabinoid" means a compound found in the hemp plant *Cannabis sativa* L from a United States Department of Agriculture sanctioned domestic hemp production program and does not include cannabinoids derived from any other substance.
- (6) "Cannabinoid product class" means a group of cannabinoid products that:
 - (a) Have all ingredients in common; and
 - (b) Are produced by or for the same company.
- (7) "Cartoon" means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that satisfies any of the following criteria:
 - (a) The use of comically exaggerated features;
 - (b) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or
 - (c) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds, or transformation.
- (8) "Child-resistant" means packaging that is:
 - (a) Designed or constructed to be significantly difficult for children under five (5) years of age to open and not difficult for adults to use properly; and
 - (b) Resealable to maintain this effectiveness for children through multiple openings for any product intended for more than a single use or containing multiple servings.
- (9) "Cosmetic" is defined by KRS 217.015(7).
- (10) "Direct supervision" means the continuous, on-site observation of an employee with the supervisor physically present.
- (11) "Food service establishment" is defined by KRS 217.015(21).
- (12) "Hemp" is defined by KRS 260.850(5).
- (13) "Hemp-derived cannabinoid" means an ingestible, inhalable, or cosmetic product that is processed or derived from hemp.
- (14) "Home-based processor" is defined by KRS 217.015(56).
- (15) "Hydrogenation" means the chemical reaction between molecular hydrogen (H₂) and another compound or element.
- (16) "Imminent health hazard" is defined by KRS 217.015(24).
- (17) "Infused" means adding a cannabinoid ingredient to an ingestible cannabinoid product.
- (18) "Non-intoxicating cannabinoid" means a product with non-psychoactive properties that does not change the function of the nervous system and does not result in alteration of perception, cognition, or behavior.
- (19) "Person" is defined by KRS 217.015(32).
- (20) "Proof of age" is defined by KRS 438.305(4).
- (21) "Revocation" means the permit to operate is cancelled by the department.
- (22) "Serious adverse event" means a medical occurrence associated with the use of a cannabinoid product that results in ~~one~~ **(1) or more of the following**:
 - (a) Death;
 - (b) A life-threatening event;
 - (c) Inpatient hospitalization, or prolongation of an existing hospitalization;
 - (d) A persistent or significant incapacity, or substantial disruption in the ability to conduct normal life functions; or
 - (e) A congenital anomaly or birth defect.
- (23) "Tentatively identified compounds" or "TIC" means compounds detected in a sample that are not among the target analytes.

[(24)] ["Total THC" is defined by 7 C.F.R. 990.1.]

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, November 13, 2024)

902 KAR 45:012. Hemp-derived cannabinoid product retail and food service establishment requirements.

RELATES TO: KRS Chapter 13B, 217.015, 217.025, 217.035, 217.037, 217.039, 217.992, 2023 Ky Acts ch. 78

STATUTORY AUTHORITY: KRS 217.125, 217.127, 217.135, 217.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 through 217.215. KRS 217.125(2) requires the secretary to provide by administrative regulation a schedule of fees for permits to operate and for inspection activities carried out by the cabinet pursuant to KRS 217.025 through 217.390. KRS 217.135 authorizes the secretary to establish food standards by administrative regulation including a reasonable definition, standard of identity, and designation of optional ingredients that shall be named on the label. KRS 217.155 allows the cabinet or its duly authorized agent free access at reasonable times for the purpose of inspection any factory, warehouse, or establishment where foods, drugs, devices, or cosmetics are manufactured or held for sale. This administrative regulation establishes the requirements for retail sale of hemp-derived cannabinoid products, including the permit fee, and methods for use of hemp-derived cannabinoid as an additive to food products. Retail establishments registered with the department prior to **December 31, 2024**~~(the effective date of this administrative regulation)~~ shall be exempted from the permit fee requirement until the annual renewal date. In accordance with 2023 Ky. Act ch 78, in order to limit the ability of minor children accessing adult-use hemp-derived cannabinoid use products, this administrative regulation prohibits the sale of adult-use products within 1,000 feet of an elementary, middle, or high school. Retail establishments registered with the department prior to **December 31, 2024 online at https://redcap.chfs.ky.gov/surveys/?s=C8AHC9AYMP74REEM**~~(the effective date of this administrative regulation)~~ shall be exempted from this location requirement.

Section 1. Retail Establishment and Food Service Establishment Registration.

(1)
 (a) Only approved cannabinoid products or class of products in accordance with 902 KAR 45:021 may be sold in retail and food service establishments. All other cannabinoid products or class of products shall be prohibited.

(b) ~~All~~ **Adult-use** cannabinoid products or class of products shall be registered in accordance with 902 KAR 45:021, Section 1(4).

(c) A retailer ~~or distributor~~ shall ensure that all cannabinoid products sold are properly registered with the department.

~~[(d)] [A retailer may register a product in lieu of the processor or manufacturer.]~~

(2) Retail establishments and food service establishments offering adult-use cannabinoid products shall be permitted by the cabinet in accordance with this administrative regulation.

(3) The permit shall be:

(a) ~~Completed~~ **Completed** online at **https://redcap.chfs.ky.gov/surveys/?s=C8AHC9AYMP74REEM**;

~~[(b)]~~ **Nontransferable** in regard to person or address;

~~[(c)]~~ **Renewed annually**; and

(c)(d) Include a \$2,000 annual permit fee.

(4) All retail establishments registered with the department prior to **December 31, 2024**~~[April 27, 2024]~~, shall have the fee required by subsection (3)(d) of this section waived until the date of the next annual renewal.

(5) A retailer shall ensure all locations are permitted by the cabinet.

(6) Retail establishments and food service establishments, **not permitted by the cabinet**, offering adult-use cannabinoid products at a temporary event or festival shall:

(a) Register with the cabinet at <https://redcap.chfs.ky.gov/surveys/?s=C8AHC9AYMP74REEM>; and

(b) Include a \$250 temporary event registration fee.

(7) Retail establishments offering adult-use cannabinoid products shall not be located within 1,000 feet of an elementary, middle, or high school. Retail establishments registered with the department prior to **December 31, 2024**~~[April 27, 2024]~~, shall be exempted from the location requirements.

(8) **An in-state**~~[A]~~ business that distributes, sells, or serves adult-use hemp-derived cannabinoid products shall not employ any person who is under twenty-one (21) years of age, unless the person employed is at least eighteen (18) years of age and under the direct supervision of a person twenty-one (21) years of age or older.

Section 2. Retail Sale of Cannabinoid Products.

(1) All cannabinoid products sold in a retail establishment shall:

(a) Be from an approved source;

(b) Be packaged and labeled in accordance with 902 KAR 45:021, Section 3; and

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

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

(3) The following hemp-derived products shall not be marketed, sold, or distributed **direct to the consumer in a retail setting**~~[to any person in the commonwealth]~~:

(a) Whole hemp buds;

(b) Ground hemp floral material;

(c) Ground hemp leaf material; and

(d) Any hemp product with a **total delta-9** ~~[delta-9]~~-THC concentration in excess of zero and three-tenths (0.3) percent.

(4) All adult-use cannabinoid products shall:

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

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

(5)

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

(b) May deliver or ship adult-use cannabinoid products to consumers over twenty-one (21) years of age in packages clearly marked "Adult-use only".

(6) All persons located in another state or country who deliver, ship, or cause to be delivered or shipped cannabinoid products directly to any Kentucky consumer shall **be registered in accordance with 902 KAR 45:021**~~[hold a valid hemp cannabinoid wholesaler or distributor permit issued by the Commonwealth]~~.

Section 3. Ingestible Cannabinoid Products at Food Service Establishments.

(1) Only registered, pre-packaged adult-use ingestible cannabinoid products may be offered as ready-to-consume or for direct consumption at food service establishments.

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

(3) Non-intoxicating cannabinoids may be added to an ingestible product prior to retail sale at a food service establishment.

(4) The non-intoxicating cannabinoid shall be obtained from an approved source.

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

(6) A food service establishment offering non-intoxicating cannabinoid products in a finished food product shall provide to consumers upon request:

(a) The common name of the product; and

(b) The manufacturer or distributor of the product.

(7) A food service establishment shall notify the cabinet within twenty-four (24) hours of becoming aware or within twenty-four (24) hours of when the food service establishment should have been aware of any serious adverse event to a hemp-derived cannabinoid product sold by the establishment.

Section 4. Inspection and Enforcement.

(1)

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

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

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

(3) All cannabinoid establishments, whether permitted or not, shall cooperate with the cabinet or its duly authorized agent during any inspections, complaint investigation, requests for information or data, in order to verify compliance with this administrative regulation.

(4)

[a] Products not in compliance with this administrative regulation shall be seized [and destroyed] by the cabinet or its duly authorized agent.

[b] The permit holder shall be given notice that they have ten (10) days to file an appeal pursuant to subsection (12) of this section.

[c] If no request for an appeal is filed, seized products shall be destroyed.

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

(6)

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

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

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

2. Phone to (502) 564-7181.

(7) If the cabinet has evidence that a permit holder has failed to act to correct an imminent health hazard:

(a) The permit shall be suspended immediately; and

(b) The permit holder may request an administrative hearing in accordance with KRS Chapter 13B.

(8) A permit holder shall notify the cabinet within **twenty-four (24) hours**~~[one (1) business day]~~ of becoming aware of any serious adverse event to a cannabinoid product sold or transferred by the permit holder.

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

(10) If a permit holder has failed to comply with the written notice within the timeframe granted, the cabinet shall issue a notice of intent to suspend the permit.

(11)

(a) The notice in subsection **(9)**~~(11)~~ of this section shall include notification that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for an administrative hearing is filed with the cabinet by the permit holder within the ten (10) day period; and

(b) The administrative hearing shall be conducted in accordance with KRS 13B.080.

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

(13) Any person who knowingly violates any provision of this administrative regulation may be fined, found guilty ~~of~~ a criminal offense, or both pursuant to KRS 217.992.

(14) State and local law enforcement officers shall have concurrent jurisdiction to enforce violations of this section.

FILED WITH LRC: November 13, 2024

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health**

**Division of Public Health Protection and Safety
(As Amended at IJC on Health Services, November 18, 2024)**

902 KAR 45:021. Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements.

RELATES TO: KRS Chapter 13B, 217.015, 217.025, 217.035, 217.037, 217.039, 217.992, 2023 Ky Acts ch. 78

STATUTORY AUTHORITY: KRS 217.125, 217.127, 217.135, 217.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 through 217.215. KRS 217.125(2), (4), (12) requires the secretary to provide by administrative regulation a schedule of fees for permits to operate and for inspection activities carried out by the cabinet pursuant to KRS 217.025 through 217.390. KRS 217.135 authorizes the secretary to establish food standards by administrative regulation including a reasonable definition, standard of identity, and designation of optional ingredients that shall be named on the label. KRS 217.155 ~~authorizes~~ allows the cabinet or its duly authorized agent free access at reasonable times for the purpose of inspecting any factory, warehouse, or establishment where foods, drugs, devices, or cosmetics are manufactured or held for sale. This administrative regulation establishes the product registration, the processing and manufacturing procedures for hemp-derived cannabinoid products, including the permit fee, and the labeling and packaging requirements for products containing hemp-derived cannabinoids. Establishments permitted with the department prior to **December 31, 2024** ~~(the effective date of this administrative regulation)~~ shall be exempted from the permit fee requirement until the annual renewal date.

Section 1. Permit and Product Registration.

(1) In-state permit.

(a) A person located in Kentucky seeking to process, manufacture, store, or distribute hemp-derived cannabinoid products shall be permitted by the cabinet.

(b) The permit shall ~~be~~:

1. ~~Be~~ nontransferable in regard to person or address;

2. ~~Be~~ posted in a conspicuous place in the facility;

3. ~~Be~~ renewed annually; ~~and~~

4. Include the fee paid in accordance with the following:

a. For a hemp processing permit, the fee is \$3,000~~[-]~~;

b. For a hemp manufacturing permit, the fee is \$1,000~~[-]~~;

c. For a hemp cannabinoid wholesale warehouse and distributor permit, the fee is \$1,000~~[-]~~; ~~and~~[-]

d. For a hemp cosmetic permit, the fee is \$200~~[-]~~; ~~and~~[-]

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

(2) The permit fee established pursuant to subsection (1)(b)4. of this section shall be waived for all facilities permitted as of **December 31, 2024** ~~April 27, 2024~~, and ~~those~~ such facilities shall pay the permit fee at next annual renewal date.

(3)

(a) All out-of-state processors and manufacturers of hemp-derived cannabinoid products available for distribution in Kentucky shall complete the business registration as required by ~~(submit an annual registration to)~~ the department.

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

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

2. Include:

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

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

c. The fee required by subparagraph (1)(b)4.c. of this section; and

d. The product registration fee required by subsection (5) of this section.

(4) Cannabinoids requiring registration:

(a) Adult-use cannabinoids shall include:

Cannabinoid	CAS Number
Delta-10-tetrahydrocannabinol (Delta-10-THC)	95543-62-7
Delta-9-tetrahydrocannabinol (THC) with three tenths of one percent (0.3%) or less Total THC	1972-08-3
Delta-8-tetrahydrocannabinol (Delta-8-THC)	5957-75-5
Delta-9-tetrahydrocannabinolic acid A (THCA-A) with three tenths of one percent (0.3%) or less Total THC	23978-85-0
Delta-9-tetrahydrocannabivarin (THCV)	31262-37-0
Delta-9-tetrahydrocannabivarinic acid (THCVA)	39986-26-0
Delta-6-tetrahydrocannabinol (Delta 6)	95720-02-8
Hexahydrocannabinol (HHC)(-)	6692-85-9
Tetrahydrocannabiphorol (THCp)	54763-99-4
Tetrahydrocannabinol methyl ether (THCM)	36403-68-6

(b) Non-intoxicating cannabinoids shall include:

Cannabinoid	CAS Number
Cannabidiol (CBD)	13956-29-1
Cannabidiolic acid (CBDA)	1244-58-2
Cannabidivarin (CBDV)	24274-48-4
Cannabidivarinic acid (CBDVA)	31992-13-5
Cannabichromene (CBC)	20675-51-8
Cannabichromenic acid (CBCA)	185505-15-1
Cannabigerolic acid (CBGA)	25555-57-1
Cannabigerol (CBG)	25654-31-3
Cannabinol (CBN)	521-35-7
Cannabitriol (CBT)	11003-36-4

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

(5) Product registration fee.

(a) ~~An initial~~**[A]** product registration fee of \$200 shall be paid for each cannabinoid product or cannabinoid product class sold in Kentucky.

(b) The fee shall be paid to the cabinet by check or money order made payable to the Kentucky State Treasurer.

(6) A new product registration ~~and fee~~ shall be required for changes:

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

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

(c) To the product label.

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

(a) The name and address of the applicant;

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

(c) The name of the product;

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

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

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

(8) A new ~~product~~**[in-state processor or manufacturer permit, or out-of-state]** registration shall be required for any changes to the requirements of subsection (7) of this section.

Section 2. Processing, Manufacture, Storage, or Distribution of Hemp-derived Cannabinoid Products.

(1) All processors and manufacturers shall meet:

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

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

(2) Cannabinoid products shall not be manufactured, marketed, sold, or distributed by a home-based processor.

(3) The following hemp-derived products shall not be manufactured **with the intent for retail sale**:

(a) Hemp cigarettes;

(b) Hemp cigars;

(c) Chew, dip, or other smokeless material consisting of hemp leaf material or hemp floral material; ~~and~~

(d) Hemp leaf material or floral material teas; ~~and~~

(e) Hemp bud or floral material.

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

(5) Non-intoxicating cannabinoid products shall:

(a) Have at least a fifteen (15) non-intoxicating cannabinoid to one (1) adult-use cannabinoid ratio; and

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

(6) Products not meeting the requirements of subsection (5) of this section shall be considered adult-use products.

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

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

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

(c) Based on the amount typically consumed.

(8)(7) A hemp-derived cannabinoid processing or manufacturing facility shall not treat or otherwise adulterate a cannabinoid product with:

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

(b) Alcohol;

(c) Nicotine; or

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

~~(9)(8)~~ All products shall be homogenized to ensure uniform distribution of cannabinoids throughout the product.

~~(10)(9)~~ Only permitted hemp-derived cannabinoid processing facilities shall perform cannabinoid extraction, conversion, catalyzation, distillation, hydrogenation, or other refinement processes.

~~(11)(40)~~ A hemp-derived cannabinoid processor or manufacturer shall only use the following solvents: water, glycerin, vegetable oils, animal fats, butane, propane, carbon dioxide, ethanol, isopropanol, acetone, heptane, ethyl acetate, and pentane. The use of any other solvent is expressly prohibited unless pre-approved by the cabinet.

~~(12)(44)~~ A hemp-derived cannabinoid processor using hydrocarbon-based solvents shall use only ~~those~~**[such]** solvents of ninety-nine (99) percent or better purity. Nonhydrocarbon-based solvents shall be food grade.

~~(13)(42)~~

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

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

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

~~(14)(43)~~

(a) Solvents shall be collected and stored in food-grade containers to maintain purity; and

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

~~(15)(44)~~ Extraction processes shall take place in an environment properly ventilated to control all sources of ignition where a flammable atmosphere is, or could be, present.

~~(16)(45)~~ Cannabinoid processing facilities shall not use pressurized canned flammable fuel, such as butane intended for use in outdoor activities, handheld torch ~~devices~~**[devises]**, and refillable cigarette lighters.

~~(17)(46)~~ Cannabinoid processing facilities using carbon dioxide shall have equipment and facilities approved by local fire code officials, if applicable.

~~(18)(47)~~ Processes using flammable gas or flammable liquid shall have leak or gas detection measures, or both.

~~(19)(48)~~ A permittee shall not use dimethylsulfoxide (DMSO) in the manufacture of hemp-derived cannabinoid products, and possession upon the permitted premises is prohibited.

~~(20)(49)~~

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

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

~~(21)(20)~~ The following substances shall be prohibited in hemp-derived cannabinoid extraction intended for inhalation:

(a) Acetates;

(b) Medium-chain triglycerides (MCT);

(c) Polyethylene glycol (PEG);

(d) Propylene glycol (PG or PPG);

(e) Diketones:

1. 2,3-butanedione (Diacetyl);

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

3. 3-hydroxybutanone (acetoin);

(f) Myclobutanil;

(g) Artificial food coloring; and

(h) Benzoic acid.

~~(22)(24)~~ Hazard analysis and risk-based preventive controls.

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

extraction, conversion, catalyzation, or distillation, hydrogenation, or other refinement processes, and shall include:

1. Processing reagents or catalysis;
2. Processing by-products or compounds; and
3. Tentatively identified compounds.

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

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

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

Section 3. Record Keeping.

(1) A master formulation record shall be prepared and maintained for each unique hemp-derived cannabinoid product.

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

- (a) Name of the cannabinoid product;
- (b) Ingredient identities and amounts;
- (c) Specifications on the delivery device (if applicable);

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

(e) Process controls and procedures; and

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

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

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

(a) Name of the cannabinoid product;

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

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

(d) Production batch number;

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

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

(g) Weight or measurement of each ingredient;

(h) Documentation of process controls;

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

(j) Total quantity of the cannabinoid product manufactured.

Section 4. Product Packaging and Labeling.

(1) Each cannabinoid product manufactured, marketed, sold, or distributed in the commonwealth shall be packaged and labeled in accordance with KRS 217.037, HB 544, 2023 Ky. Acts ch. 78, and this administrative regulation.

(2) Each container of adult-use cannabinoid product, excluding cosmetics, shall:

(a) Have a tamper-evident seal; and

(b) Be in child-resistant packaging.

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

(4) Cannabinoid product packaging shall not include:

(a) Any cartoon images;

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

(c) Likeness to or imitation of any commercially available candy, snack, baked good, or beverage packaging or labeling;

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

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

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

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

(b) Other hemp-derived cannabinoids labeled milligrams per gram (mg/g) per serving, excluding cosmetics, and milligrams per package, if listed on the label.

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

(a) "Warning: Contains THC";

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

(c) "There may be health risks associated with the consumption of this product";

(d) "There may be additional health risks associated with the consumption of this product for those who are pregnant, nursing, or plan to become pregnant";

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

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

(g) "Use of this product may result in a positive drug screen";

(7) A quick response or QR code may be used as a link to the warning statements required by subsection (6) of this section. The QR code shall be labeled as "Warning Statements" directly above or below the code and shall be large enough to be smart-phone readable.

Section 5. Inspection and Enforcement.

(1) The cabinet or its duly authorized agent shall conduct an onsite inspection of all permitted cannabinoid processing and manufacturing establishments, storage warehouses, and distribution centers.

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

(3) All cannabinoid establishments, whether permitted or not, shall cooperate with the cabinet or its duly authorized agent during any inspections, complaint investigation, and requests for information or data, in order to verify compliance with this administrative regulation.

(4)

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

(b) The permit holder shall be given notice that it has ~~they~~ have ten (10) days to file an appeal pursuant to subsection (12) of this section.

(c) If a ~~no~~ request for an appeal is not filed, seized products shall be destroyed.

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

(6)

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

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

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

2. Phone to (502)564-7181.

(7) If the cabinet has evidence that a permit holder has failed to act to correct an imminent health hazard, the following enforcement provisions shall be initiated:

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

(8) If a permit suspension is due to an imminent health hazard, the permit holder may submit a request for an administrative hearing to the cabinet in accordance with KRS Chapter 13B.

(9) A permit holder shall notify the cabinet within twenty-four (24) hours of becoming aware of any serious adverse event to a hemp-derived cannabinoid product sold or transferred by the permit holder.

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

(11) If a permit holder has failed to comply with the written notice within the timeframe granted, the cabinet shall issue a notice of intent to suspend the permit.

(12)

(a) The notice in subsection (11) of this section shall include notification that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for an administrative hearing is filed with the cabinet by the permit holder within the ten (10) day period; and

(b) The administrative hearing shall be conducted in accordance with KRS 13B.080.

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

(14) Any person who violates any provision of this administrative regulation may be fined, found guilty ~~of~~or a criminal offense, or both pursuant to KRS 217.992.

(15) State and local law enforcement officers shall have concurrent jurisdiction to enforce violations of this administrative regulation~~section~~.

FILED WITH LRC: November 18, 2024

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CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Secretary

(As Amended at IJC on Health Services, November 18, 2024)

915 KAR 1:010. Initial and renewal applications for cannabis business licenses.

RELATES TO: KRS Chapter 13B, Chapter 218B, 523.100

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing initial application and renewal procedures for cannabis business licenses. This administrative regulation establishes those procedures.

Section 1. Types of Applications for Cannabis Business Licenses.

(1) The cabinet shall accept the following types of applications for cannabis business licenses:

- (a) Initial application; and
- (b) Renewal application.

(2) By submitting an initial or renewal application to the cabinet, an applicant consents to any investigation of the applicant's ability to meet the requirements of KRS Chapter 218B and 915 KAR Chapter 1.

(3) An application for an initial license or renewal license shall be incomplete~~is not complete~~ and shall be rejected by the cabinet unless:

(a) The payment of the applicable fee established~~provided~~ in Section 2 or Section 4 of this administrative regulation is submitted with the application; and

(b) All required information for each section of the application, including attachments and any supplemental information requested by the cabinet, is submitted to the cabinet within the allowable time period.

(4) An application submitted under this administrative regulation shall contain the following statement acknowledged by the applicant: "A false statement made in this application is punishable under the applicable provisions of KRS 523.100."

Section 2. Initial License Application Fees. An applicant for an initial cannabis business license shall pay the applicable application fee by credit card or automated clearing house (ACH) transfer at the time of application submission to the cabinet. The initial application fee shall be~~is~~ nonrefundable except as established~~indicated below~~ in Section 3(6) of this administrative regulation. The initial license application fees shall be:

- (1) Tier I cultivator: \$3,000;
- (2) Tier II cultivator: \$10,000;
- (3) Tier III cultivator: \$20,000;
- (4) Tier IV cultivator: \$30,000;
- (5) Processor: \$5,000;
- (6) Producer: \$5,000 plus the applicable cultivator tier application fee;
- (7) Dispensary: \$5,000; and
- (8) Safety Compliance Facility: \$3,000.

Section 3. Initial Applications for Cannabis Business Licenses.

(1) An initial license shall be~~is~~ valid for one (1) year from the date of issuance shown on the license. The cabinet shall publish notice of initial license application availability on the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>, including the time frame during which initial license applications shall be accepted. This notice shall also state the category and number of cannabis business licenses available for issuance at the close of the application period.

(2) An applicant shall only use the initial license application form prescribed by the cabinet and made available through the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(3) An applicant shall submit an initial license application to the cabinet in the manner prescribed by the application instructions.

(4) An applicant shall apply for a separate license for each location where it intends to operate a cannabis business. During an initial license application availability period, an applicant shall only apply for a license in one (1) cannabis business license type (cultivator, processor, producer, dispensary, or safety compliance facility) being offered at that time. An applicant may submit multiple applications for a license within one (1) cannabis business license type if so long as the following criteria is met:

(a) Each application shall contain~~contains~~ a separate and distinct physical address where the applicant proposes to conduct cannabis business activities;

(b) Each application shall contain~~contains~~ documentation of sufficient capital in accordance with subsection (5)(q) of this section and the applicant shall not use the same capital for more than one (1) application;

(c) For the four (4) cannabis cultivator tiers, an applicant shall only submit one (1) application per cultivation tier; and

(d) For dispensaries, an applicant shall only submit one (1) application per medicinal cannabis region as identified in 915 KAR 1:020, Section 3 and shown on the map published on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(5) In the initial license application, the applicant shall submit the following in the initial license application:

(a) The legal name, business type, any trade or doing business as (DBA) name, mailing address, federal tax identification number, Web site (if any), email address, and phone number of the proposed

cannabis business and confirmation that the entity is registered with the Kentucky Secretary of State in good standing and authorized to do business in Kentucky;

(b) The type of cannabis business license requested;

(c) The business entity formation documents such as articles of incorporation, articles of organization, or bylaws;

(d) The proposed location of cannabis business activities, including the physical address of the proposed cannabis business and the global positioning system (GPS) coordinates for any proposed cannabis business activities as well as:

1. Documentation such as a contingent agreement for property sale or lease or an existing deed or lease that shows the applicant has the authority to use the proposed location as a cannabis business for, at a minimum, the term of the license; and

2. A site plan for the proposed cannabis business.

(e) The name, address, date of birth, and curricula vitae or resume of each principal officer and board member of the proposed cannabis business as well as any additional information required by the cabinet;

(f) Disclosure of any individual or business entity with an ownership interest of at least ten (10) percent equity or similar interest in the proposed cannabis business and each identified individual or entity's ownership percentage as well as any additional information required by the cabinet;

(g) Disclosure of any parent company or parent individual that has an ownership interest in the proposed cannabis business and each identified individual or entity's ownership percentage as well as any additional information required by the cabinet;

(h) A document showing the ownership organizational structure of the proposed cannabis business;

(i) The name and address of any individual or entity providing financial support to the proposed cannabis business that are not involved in the day-to-day operations beyond providing financial resources as well as any additional information required by the cabinet;

(j) The name and address of any physician or advanced practice registered nurse that has an ownership or investment interest in or compensation agreement with the proposed cannabis business as well as any additional information required by the cabinet;

(k) Disclosure of whether any principal officer or board member of the applicant has been convicted of a felony criminal offense, and if so, a description of each felony offense;

(l) Disclosure of any instances in which a business or not-for-profit entity that any of the applicant's board members managed or served on the board of was convicted, fined, censured, or had a registration or license suspended or revoked in any administrative or judicial proceeding;

(m) If applicable, documentation that the applicant is capable of successfully establishing and operating a cannabis business in the Commonwealth, including:

1. Demonstrated experience establishing and operating a for-profit or nonprofit organization or other business within Kentucky or any other jurisdiction, and the nature of the business conducted by the organization;

2. Any history relating to receipt of a similar license or other authorization in other jurisdictions, including provisional licenses, suspensions, revocations, or disciplinary actions to include civil monetary fines or warnings; and

3. Any history of response to suspensions, revocations, disciplinary actions, civil monetary fines, or warnings imposed relating to any similar license or other authorization in another jurisdiction, and the plans of correction or other responses made to those actions.

(n) A description of the duties, responsibilities, and roles of each principal officer, board member, employee, and any other individual or entity with a financial interest in the proposed cannabis business who are not involved in the day-to-day operations of the business;

(o) A timeline showing the steps and estimated amount of time the applicant shall take to begin cannabis business activities in the Commonwealth;

(p) A financial plan for the proposed cannabis business, including budget and cash flow planning and debt management;

(q) Documentation of sufficient capital available to the applicant, either on deposit or through extension of credit from one (1) or more financial institutions, in the following amounts as applicable:

1. Tier I cultivator: \$50,000;

2. Tier II cultivator: \$200,000;

3. Tier III cultivator: \$500,000;

4. Tier IV cultivator: \$1,000,000;

5. Processor: \$150,000;

6. Producer: \$150,000 plus the applicable cultivator tier amount;

7. Dispensary: \$150,000; or

8. Safety Compliance Facility: \$150,000.

(r) A summary of the intended plan of operation that describes, at a minimum, how the applicant's proposed cannabis business operations shall address:

1. Security;

2. Employee qualifications, supervision, and training;

3. Transportation of medicinal cannabis;

4. Storage and labeling of medicinal cannabis;

5. Inventory management;

6. Recordkeeping;

7. Preventing unlawful diversion of medicinal cannabis; and

8. Workforce development and job creation.

(s) The name, mailing address, business title, phone number, and email address of the primary contact for the application as well as the name, address, and email address of any entity or individual who assisted the applicant with preparing the application;

(t) Documentation of any management service agreement in place for the proposed cannabis business;

(u) A notarized signature page signed by the applicant; and

(v) An attestation that:

1. The site of the proposed cannabis business is not within 1,000 feet of an existing elementary or secondary school or a daycare center. For the purpose of this administrative regulation, 1,000 feet shall be measured in a straight line from the nearest property line of an existing elementary school, secondary school, or daycare center to the nearest property line of the applicant's proposed place of business;

2. The applicant can continuously maintain sufficient capital for operations of its proposed cannabis business for, at a minimum, the term of the initial license;

3. The applicant can continuously maintain effective security, surveillance, and accounting control measures to prevent diversion, abuse, and other illegal conduct regarding medicinal cannabis;

4. The applicant shall comply with KRS Chapter 218B and 915 KAR Chapter 1;

5. The applicant consents to the cabinet verifying information provided in the application with any relevant governmental agency or third party;

6. If issued a license, the applicant shall pay the applicable license fee within fifteen (15) calendar days of notification in a manner prescribed by the cabinet;[.]

7. If issued a license, the applicant shall conduct a criminal background check into the criminal history of each person seeking to be a principal officer, board member, agent, volunteer, or employee of the cannabis business before that person begins work and shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age;

8. The applicant consents to reasonable inspections, examinations, searches, and seizures as contemplated by KRS Chapter 218B and 915 KAR Chapter 1;

9. The applicant shall obtain and maintain workers' compensation insurance for all employees in the Commonwealth and shall pay all required employer contributions to the Kentucky Office of Unemployment Insurance;

10. The applicant shall obtain and maintain commercial general

liability insurance for \$1,000,000 per occurrence and \$2,000,000 per aggregate and commercial automobile insurance for any vehicle used to transport medicinal cannabis or medicinal cannabis products;

11. The applicant shall complete all trainings required by the cabinet for the proposed cannabis business's principals, agents, employees, and volunteers;

12. The applicant shall establish any standard operating procedures required by KRS Chapter 218B and 915 KAR Chapter 1 prior to the first date of cannabis business activities in the Commonwealth, including those specific to its cannabis business category. The standard operating procedures that apply to cannabis businesses include:

- a. Security;
- b. Recordkeeping;
- c. Employee qualifications, supervision, and training;
- d. Quality assurance;
- e. Adverse event reporting and recall;
- f. Waste disposal and sanitation;
- g. Transportation of medicinal cannabis;
- h. Inventory management, including storage and labeling of medicinal cannabis;
- i. Cash management and anti-fraud procedures; and
- j. Preventing unlawful diversion of medicinal cannabis.

13. For an applicant seeking a safety compliance facility license, one (1) or more of its prospective principal officers or board members shall not be a principal officer or board member of a cultivator, processor, producer, or dispensary applying to operate in the Commonwealth;

14. For an applicant seeking a cultivator, processor, producer, or dispensary license, one (1) or more of its prospective principal officers or board members shall not be a principal officer or board member of a safety compliance facility applying to operate in the Commonwealth;

15. The applicant consents to sharing medicinal cannabis sales data with law enforcement;

16. The applicant shall use the Commonwealth's designated electronic monitoring system and seed to sale tracking system required by KRS 218B.140 in the manner prescribed by the cabinet;

17. The applicant has disclosed all individuals and entities with an ownership interest of at least ten (10) percent equity or similar interest in the proposed cannabis business as well as any parent companies and parent company individuals with an ownership interest in its proposed cannabis business; and

18. The applicant swears or and affirms that all information and documentation provided with the initial license application is true and correct.

(6) An initial license application received after the submission time frame stated in the published notice of initial license application availability shall be rejected by the cabinet without further consideration along with the return of the initial application fee.

(7) The cabinet shall acknowledge receipt of an initial application for a cannabis business license within fifteen (15) calendar days of submission by the applicant. The cabinet shall review each application to determine whether the application is complete. The cabinet shall provide written notice to an applicant when it has determined the application is complete. If the cabinet determines an application is not complete, the cabinet shall provide written notice to the applicant of the identified deficiencies in the application. The applicant shall have ten (10) calendar days from the date of the deficiency notification to cure the identified deficiencies and provide any missing information or documentation to the cabinet in the manner prescribed by the cabinet. If the applicant fails to cure any deficiency within ten (10) calendar days from the date of the deficiency notification, the cabinet shall reject the application as incomplete.

(8) The cabinet shall provide notification to applicants as to whether an application for a license has been approved or denied within forty-five (45) calendar days of receiving an application and determining it is [its] complete. Any application denials shall be done in accordance with KRS 218B.090(2) and (4), including providing written notice to the applicant that he or she may file a written request for an administrative hearing on the application within thirty (30) calendar days after the mailing date of the notice. An applicant

shall use the hearing request form prescribed by the cabinet and made available through the website for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>. An applicant shall submit the hearing request form to the cabinet in the manner prescribed by the form's instructions. Any hearing resulting from the applicant's written request shall be conducted in accordance with KRS Chapter 13B.

Section 4. License Renewal Fees. An applicant for renewal of a cannabis business license shall pay the applicable annual renewal fee by credit card or ACH transfer at the time of application submission to the cabinet. The annual renewal fee shall be [is] refundable if the renewal application is denied. The annual renewal fees shall be [are]:

- (1) Tier I cultivator: \$12,000;
- (2) Tier II cultivator: \$25,000;
- (3) Tier III cultivator: \$50,000;
- (4) Tier IV cultivator: \$100,000;
- (5) Processor: \$25,000 ~~[\$15,000]~~;
- (6) Producer: \$25,000 ~~[\$15,000]~~ plus the applicable cultivator tier annual renewal fee;
- (7) Dispensary: \$30,000 ~~[\$15,000]~~; and
- (8) Safety Compliance Facility: \$12,000.

Section 5. Renewal Applications for Cannabis Business Licenses.

(1) A renewal license shall be [is] valid for one (1) year from the date of issuance shown on the license. The requirements that a licensed cannabis business shall meet to receive an initial license are continuing requirements to maintain the license. A cannabis business shall continuously comply with the licensing requirements of KRS Chapter 218B and 915 KAR Chapter 1 during the initial licensure period and any subsequent renewal period.

(2) The cabinet shall notify each licensee at least ninety (90) calendar days prior to the date the license expires to allow the licensee to begin the renewal process if the licensee so chooses.

(3) A licensee shall only use the license renewal application form prescribed by the cabinet and made available through the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(4) A license renewal application shall be submitted to the cabinet at least sixty (60) calendar days prior to the expiration of the license. The cabinet shall reject a license renewal application if it is not submitted at least sixty (60) calendar days prior to the expiration of the license and shall return the annual renewal fee to the licensee along with written notice of the rejection.

(5) A licensee shall submit a license renewal application to the cabinet in the manner prescribed by the application instructions.

(6) A licensee shall include the following information with a license renewal application:

(a) Information regarding any charge, or any initiated, pending, or concluded investigation or proceeding, during the period of the initial license or prior renewal period, by any governmental or administrative agency, including an investigation or proceeding involving theft, loss, or possible diversion of medicinal cannabis by the licensee or from the licensee's facility;

(b) Information regarding the licensee's ability to continue with licensed activities, including any staffing issues, delays, medicinal cannabis shortages, medicinal cannabis product recalls, location issues, and financial issues that occurred since the license was issued;

(c) The licensee's history of compliance with KRS Chapter 218B and 915 KAR Chapter 1, including a summary of any noncompliance and corrective action taken during the current and any previous licensing period or a statement indicating that the licensee has not violated KRS Chapter 218B or 915 KAR Chapter 1 as of the date the renewal application is submitted; and

(d) Any additional information required by the cabinet.

(7) The cabinet shall acknowledge receipt of a renewal license application within fifteen (15) calendar days of submission by the applicant. The cabinet shall review each application to determine whether the application is complete. If the cabinet determines an application is not complete, the cabinet shall provide written notice to the applicant of the identified deficiencies in the application. The

applicant shall have ten (10) calendar days from the date of the deficiency notification to cure the identified deficiencies and provide any missing information or documentation to the cabinet in the manner prescribed by the cabinet. If the applicant fails to cure any deficiency within ten (10) calendar days from the date of the deficiency notification, the cabinet shall reject the application as incomplete.

(8) If the cabinet determines that a license renewal application is lacking sufficient information upon which to make a renewal determination, the cabinet shall notify the licensee in writing of the factors that require additional information and documentation. The licensee shall have ten (10) calendar days from the date of the notice to provide the requested information and documentation to the cabinet. A licensee's failure to provide the requested information to the cabinet by the deadline shall be grounds for denial of the license renewal application.

(9) The cabinet may conduct an onsite inspection of the licensee's facilities and records to assist with determining continuing compliance with KRS Chapter 218B and 915 KAR Chapter 1.

(10) An existing cannabis business license shall be is immediately invalid upon expiration if the licensee has not filed a license renewal application and paid the required renewal fee in accordance with Section 4 of this administrative regulation. If a licensee properly submits a timely renewal application with applicable renewal fee, the cabinet may extend its existing license from the date the existing license expires until the cabinet can complete its renewal application review and issue a determination.

Section 6. Minimum Performance Standards for License Renewal.

(1) Pursuant to KRS 218B.080(5)(b), the renewal of a cannabis business license shall be contingent upon successful achievement of minimal performance standards established by the cabinet. The minimum performance standards for licensees participating in the Kentucky Medical Cannabis Program shall be that[are]:

(a) The licensee has, and is likely to continue to maintain, effective controls against diversion of medicinal cannabis at its facility;

(b) The licensee has not made false or misleading statements in:

1. A renewal application or any other application submitted to the cabinet;

2. Any document or written communication submitted to the cabinet; or

3. Any verbal communication to the cabinet.

(c) The licensee has a documented history of compliance with the licensee requirements in KRS Chapter 218B and 915 KAR Chapter 1;

(d) The licensee has effectively addressed any identified compliance issues through corrective action;

(e) The licensee has shown it has the ability to continue to comply with all state and local laws and administrative regulations applicable to the activities in which it may engage under the license, if renewed;

(f) The licensee has a documented history of successfully addressing and mitigating any quality or safety issues with its medicinal cannabis or medicinal cannabis products;

(g) The licensee timely completes all reporting required by KRS Chapter 218B and 915 KAR Chapter 1; and

(h) The licensee participates in surveys distributed by the cabinet and provides full, complete, and timely responses.

(2) The cabinet shall deny a renewal application for a cannabis business license if it determines the licensee has failed to:

(a) Meet one (1) or more of the minimum performance standards established in this section; or

(b) Any additional basis established[provided] in KRS 218B.090.

(3) The cabinet shall provide written notification to a licensee as to whether its renewal application has been approved or denied within forty-five (45) calendar days of receiving an application and determining it is[its] complete. Any renewal application denials shall be done in accordance with KRS 218B.090(4), including providing written notice to the applicant that he or she may file a written request for an administrative hearing on the application within thirty

(30) calendar days after the mailing date of the notice. An applicant shall use the hearing request form prescribed by the cabinet and made available through the website for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>. An applicant shall submit the hearing request form to the cabinet in the manner prescribed by the form's instructions. Any hearing resulting from the applicant's written request shall be conducted in accordance with KRS Chapter 13B.

Section 7. Duty to Report. During the application process, an applicant for an initial cannabis business license or renewal license shall, upon discovery of any change in facts or circumstances reflected in the initial application or renewal application submitted to the cabinet, notify the cabinet in writing of the change or any newly discovered fact or circumstance that would have been included in the application if known at the time the application was submitted. The notification required under this section shall be sent by[via] electronic mail to kymedcanreporting@ky.gov within twenty-four (24) hours of discovery. Failure to timely notify the cabinet of a change or newly discovered facts or circumstances may result in denial of the application.

FILED WITH LRC: November 18, 2024

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CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (As Amended at ARRS, November 13, 2024)

922 KAR 1:050. State funded adoption assistance.

RELATES TO: KRS 199.555, 202B.010(12)[205.639(17), 216B.450(5), 600.020(21), (54), 620.020(5)], Chapter 625

STATUTORY AUTHORITY: KRS 194A.050(1), 199.555(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.555(10) requires the cabinet to establish and promulgate by administrative regulation criteria to be followed for the adoption of special needs children. This administrative regulation establishes guidelines for the implementation of the state-funded adoption assistance program for children who may otherwise grow up in foster care.

Section 1. Definitions.

(1) "Adoption subsidy" means a payment for a special needs child placed for adoption when an adoption assistance agreement is complete.

(2) "Extraordinary medical expenses" is defined by KRS 199.555(4).

(3) "Nonrecurring adoption expenses" is defined by KRS 199.555(3).

(4) "Secretary" means the Secretary of the Cabinet for Health and Family Services or designee.

(5) "Special needs child" is defined by KRS 199.555(1).

(6) "State-funded adoption assistance" is defined by KRS 199.555(2).

Section 2. Adoption Assistance Eligibility Criteria.

(1) The secretary shall decide whether to pay and provide adoption assistance in accordance with KRS 199.555(5).

(2) A special needs child shall include a child for whom adoptive placement without financial assistance is unlikely in accordance with KRS 199.555(1), because the child:

(a) Has a physical or mental disability;

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- (b) Has an emotional or behavioral disorder;
 - (c) Has a recognized risk of physical, mental, or emotional disorder;
 - (d) Is a member of a sibling group in which the siblings are placed together;
 - (e) Has had previous adoption disruption or multiple placements;
 - (f) Is a member of a racial or ethnic minority and two (2) years old or older; or
 - (g)
 - 1. Is age seven (7) or older;
 - 2. Has a significant emotional attachment or psychological tie to his or her foster family; and
 - 3. The cabinet has determined should remain with the family because it is in the best interest of the child.
- (3) To qualify for state-funded adoption assistance in accordance with KRS 199.555, a special needs child shall:
- (a) Be committed to the Cabinet for Health and Family Services;
 - (b) Not have a parent with custody or a legal claim to the child;
 - (c) Be under age eighteen (18); and
 - (d) Not be eligible for federal Title IV-E adoption assistance in accordance with 922 KAR 1:060, with the exception of extraordinary medical expenses pursuant to Sections 7(1), 8, and 10(2) of this administrative regulation.

Section 3. Parental Standards. A parent receiving a child eligible for adoption assistance payments shall meet the same standards as those applied to other adoptive applicants in accordance with:

- (1) 922 KAR 1:350; or
- (2) 922 KAR 1:310.

Section 4. Adoptive[Adoption] Placement Agreement.

(1) Prior to placing a child for adoption, the prospective adoptive parent and the cabinet shall review and sign an adoptive[the adoption] placement agreement to set forth the terms of a child's placement with the prospective adoptive parent.

(2) The adoptive[adoption] placement agreement shall advise the prospective adoptive parent of the:

- (a) Special needs of the child;
- (b) Cabinet's expectations; and
- (c) Services offered by the cabinet to assist the prospective adoptive parent in the adoption process.

Section 5. Adoption Assistance Agreement. Prior to finalization of the adoption, the prospective adoptive parent and the cabinet shall discuss[negotiate] and sign an adoption assistance agreement in accordance with KRS 199.555(6) that shall:

- (1) Determine the nature and amount of the adoption subsidy; and
- (2) Remain in effect until suspended, reduced, or terminated in accordance with Section 6 of this administrative regulation.

Section 6. Adoption Assistance Suspension, Reduction, and Termination.

(1) Except as provided in subsection (2) of this section, the cabinet shall temporarily suspend state-funded adoption assistance payments during the period of time the adopted child reenters the custody of the cabinet[:]

- [(a)]
 - [1.] [Resides in:]
 - [a.] [Foster care as defined by KRS 620.020(5);]
 - [b.] [A residential treatment facility as defined by KRS 600.020(54);]
 - [c.] [A psychiatric residential treatment facility as defined by KRS 246B.450(5);]
 - [d.] [A psychiatric hospital as defined by KRS 205.639(17) beyond thirty (30) consecutive calendar days; or]
 - [e.] [Detention:]
 - [(i)] [As defined by KRS 600.020(24);]
 - [(ii)] [Outside the adoptive home; and]
 - [(iii)] [For a period of thirty (30) calendar days or more; or]
- [2.] [Is absent from the home of the adoptive parents for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and]

[(b)] [Receives care and support for the child's special needs from a local, state, or federal public agency].

(2) State-funded adoption assistance shall be reduced[renegotiated] in accordance with 922 KAR 1:530, Section 3(2).

(3)
[a] [State-funded adoption assistance shall be reduced] If the adoptive parent fails to provide documentation demonstrating financial responsibility and support after the cabinet has requested the documentation in writing from the adoptive parent at least three (3) times state-funded adoption assistance shall be reduced.

[b][4] The cabinet shall resume payments pursuant to this section[of the administrative regulation], including any needed adjustments to the agreement, once the adoptive parent has provided the requested documentation demonstrating financial responsibility and support of the child.

[4][5] [(3)] State-funded adoption assistance payments shall be terminated in accordance with KRS 199.555(8) if the:

- (a) Adoptive parent:
 - 1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;
 - 2. Becomes deceased; or
 - 3. Requests discontinuation of the adoption assistance payments; or
- (b) Special needs child:
 - 1. Becomes deceased;
 - 2. Marries;
 - 3. [Gains full-time employment;]
 - [4.] [Is considered an emancipated minor;]
 - [5.] Is inducted into military service;
 - 4.[6.] Reaches age eighteen (18); or
 - 5.[7.] If the child is enrolled in high school, reaches:
 - a. Age nineteen (19); or
 - b. The month of the child's high school graduation, if the child's graduation precedes the child's 19th birthday.

Section 7. Adoption Assistance Payments.

(1) State-funded adoption assistance payments may include:

(a) Extraordinary medical expenses in accordance with KRS 199.555;

(b) Nonrecurring adoption expenses not to exceed \$2,000[\$4,000] incurred in the adoption of a child who is considered a special needs child; and

(c) An adoption subsidy.

(2) An adoption assistance payment shall begin on the date agreed to[that the adoption placement agreement and adoption assistance agreement are signed] by the adoptive parent and the cabinet representative, as documented on the adoption assistance agreement.

(3) The amount of the state-funded adoption assistance payment shall not exceed the amount paid for foster care maintenance for the same child, in accordance with KRS 199.555(7), including medically complex[fragile], specialized medically complex[fragile], and care plus foster care per diem reimbursements established by the Department for Community Based Services.

(4) A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance payments in excess of:

(a) A care plus foster care or medically complex foster care per diem reimbursement established by the Department for Community Based Services; or

(b) The therapeutic foster care per diem reimbursed by the child-placing agency on behalf of the child unless[if] the:

- 1. Dollar amount is necessary to meet the child's needs; and
- 2. Commissioner or designee approves.

Section 8. Covered Extraordinary Medical Services.

(1)

(a) Copayments for covered extraordinary medical expenses shall be required using the adopted parent household's adjusted gross income in relation to Kentucky's estimated median household income established by the United States Census Bureau.

(b) To the extent state resources allow, the cabinet shall annually adjust the estimated median income used for copayment calculations concurrent with the United States Census Bureau.

(c) Unless otherwise noted in this section, copayments shall be as established in this paragraph.

1. A copayment for extraordinary medical services shall not be required from an adoptive parent whose household's adjusted gross income is at or below 100 percent of Kentucky's estimated median household income.

2. A ten (10) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 100 percent, but less than 150 percent, of Kentucky's estimated median household income.

3. A fifteen (15) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 150 percent, but less than 200 percent, of Kentucky's estimated median household income.

4. A twenty (20) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 200 percent of Kentucky's estimated median household income.

(2) A verifiable receipt and service provider contact information shall be submitted prior to reimbursement for services listed in this section.

(3) Copayments shall be deducted from each monthly receipt that is submitted for payment of a covered extraordinary medical service.

(4) Services covered by the extraordinary medical program may include:

(a) Orthodontia with a:

1. Copayment of fifty (50) percent of the cost; and

2. Dentist or physician's verification that the child's medical or dental need exists[existed prior to the adoption finalization], is medically necessary, and verification was obtained prior to the adoption finalization;

(b) Transportation if mileage for health treatment needs exceed the yearly mileage for foster care rates;

(c) Child care services:

1. For a full-time or part-time working parent who works a minimum of twenty (20) hours per week;

2. For a non-working parent with documentation from a qualified professional, as defined by KRS 202B.010(12), of the therapeutic need for the service;

3. With fees paid to the child care provider by the adoptive parent and reimbursed by the cabinet only after the cabinet receives a paid receipt as verified from the child care provider;

4. With annual employment verification provided to the cabinet by a working adoptive parent;

5. Reimbursed at a rate based on the age of the child and certification of the provider in accordance with 922 KAR 2:160; and

6. Ending upon the child reaching age thirteen (13), unless documentation from a medical or mental health professional stating the diagnosed need for continuance of the child care is:

a. Provided upon the child reaching age thirteen (13); and

b. Submitted every six (6) months to the cabinet's social service worker;

(d) Tutoring:

1. Not to exceed twenty-five (25) dollars per hour for no more than two (2) hours per week;

2. Provided by personnel other than immediate family, for which qualifications are verified by a social services worker;

3. For a child:

a. With an individual education plan (IEP); or[and]

b. Two (2) or more grade level years behind chronological age; and

4. With need and unavailability of services as documented by the child's school;

(e) Respite care:

1. Offered to a child approved for the medically complex or care

plus rates prior to adoption finalization, at two (2) respite days per child per month;

2. Offered to a child approved for the specialized medically fragile rate prior to adoption finalization, at three (3) respite days per month per child;

3. That shall not be cumulative; and

4. Submitted monthly for reimbursement; and

(f) Evidence-based or evidence-informed health services after Medicaid and private health insurance have been exhausted, such as:

1. Counseling;

2. Expressive or art therapy;

3. Behavioral therapy;

4. Physical therapy;

5. Occupational therapy;

6. Speech therapy;

7. Prescribed medication, excluding over the counter medication[Medication]; or

8. Special equipment.

(5) The extraordinary medical program shall include the reimbursement of funeral and burial expenses for a medically complex child who had a terminal medical diagnosis documented by a treating physician prior to an adoption being finalized, not to exceed \$4,500 for the cost of the funeral and burial.

Section 9. Annual Family Contact.

(1) Annual contact with the adoptive family shall be made by mail, email, phone,[-or] home visit, or other cabinet method of contact to determine that the:

(a) Child remains in the adoptive home;

(b) Parent continues to provide care and support for the child; and

(c) Adoption assistance payments continue to meet the special needs of the child.

(2) The cabinet may conduct a home visit after an adoption assistance annual contact is made by mail, email, phone, or other cabinet method of contact:

(a) If:

1. The adoptive parent requests a home visit;

2. The special needs of the child change, as indicated by the adoptive parent;

3. Attempts to update information by [additional]mail, email[-or] phone, or other cabinet method of contact have failed; or

4. The cabinet receives information that is contrary to the information verified by the adoptive parent during the annual contact; or

(b) In accordance with 922 KAR 1:330.

Section 10. Adoption Assistance Renegotiation.

(1) Renegotiation of an adoption assistance agreement:

(a) May be requested by the cabinet or the adoptive parent before or after the adoption is finalized; and

(b) Is contingent on compliance with Sections 2(2), 6, 9, and 12 of this administrative regulation.

(2) If conditions in KRS 199.555(6) are met, the cabinet shall reimburse extraordinary medical expenses requested by an adoptive parent of a special needs child to prevent disruption of the adoption:

(a) After the adoption is final; and

(b) Through state funded adoption assistance.

(3) A move of the special needs child or the adoptive parent of the special needs child out of the state or country shall have no effect on the child's eligibility for state funded adoption assistance payments.

(4) If an adoption assistance payment is changed through renegotiation, the cabinet and adoptive parent shall sign a new adoption assistance agreement.

Section 11. Service Appeal. An applicant for adoption assistance payments or an adoptive family aggrieved by a cabinet action shall be granted an administrative hearing in accordance with 922 KAR 1:320.

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Section 12. Notice of Change.

(1) Cabinet staff shall provide notice of a reduction, ~~suspension~~~~[discontinuance]~~, or termination of adoption assistance payments:

(a) Ten (10) calendar days in advance; and

(b) In accordance with 922 KAR 1:320, Section 6.

(2) An adoptive parent shall notify the cabinet of any changes in circumstances that would make the adoptive parent ineligible for adoption assistance payments or change the amount of the adoption assistance payment as described in KRS 199.555(9) and Section 6 of this administrative regulation.

Section 13. State-funded Adoption Assistance Limitation. The number of state-funded adoption assistance cases and the amount of state-funded adoption assistance payments paid per case shall be limited by available funds for the state-funded adoption assistance program.

~~[Section 14.] [Training. Contingent upon the availability of funding, the Department for Community Based Services shall offer training to adoptive parents receiving state-funded adoption assistance consistent with training offered to foster home parents as specified in 922 KAR 1:495.]~~

FILED WITH LRC: November 13, 2024

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CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (As Amended at ARRS, November 13, 2024)

922 KAR 1:060. Federal Title IV-E adoption assistance.

RELATES TO: KRS 199.500(1), 199.502, 199.555, 199.557, Chapter 625, 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.557(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.557(4) requires the cabinet to implement federal Title IV-E adoption assistance payments in accordance with the administrative regulations promulgated by the cabinet. This administrative regulation establishes guidelines for the implementation of the federal Title IV-E adoption assistance program for children who may otherwise grow up in foster care.

Section 1. Definitions.

(1) "Adoption assistance agreement" is defined by 42 U.S.C. 675(3).

(2) "Adoption subsidy" means a payment for a special needs child placed for adoption when an adoption assistance agreement is complete.

(3) "Federal Title IV-E adoption assistance" is defined by KRS 199.557(1).

(4) "Nonrecurring adoption expenses" is defined by 42 U.S.C. 673(a)(6).

(5) "Relative" means the father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, niece, great grandmother, great grandfather, great aunt, or great uncle of the child.

Section 2. Adoption Assistance Eligibility Criteria.

(1) A child shall be determined by the cabinet as a special needs child in accordance with 42 U.S.C. 673(c), if:

(a) The child is available for adoption in accordance with:

1. KRS 199.500(1);

2. KRS 199.502; or

3. KRS Chapter 625;

(b) The child has a specific factor or condition described by KRS 199.555(1) that makes the child difficult to place for adoption without adoption assistance; and

(c) Effort has been made to place the child with an appropriate adoptive parent without providing adoption assistance.

(2) If the child has a strong emotional tie with the prospective adoptive parent while in the care of the prospective adoptive parent as a foster child, an exception to subsection (1)(c) of this section shall be made.

(3) A special needs child shall:

(a) Meet the eligibility criteria established in 42 U.S.C. 673 when the adoption proceedings are initiated including:

1. Eligibility for Aid to Families with Dependent Children effective on July 16, 1996, upon the child's removal from the home of a relative;

2. Eligibility for Supplemental Security Income;

3. Status as a child:

a. Born to a minor parent who is receiving Title IV-E foster care maintenance; and

b. Who has received Title IV-E foster care maintenance;

4. Having been in foster care for sixty (60) consecutive months on or after October 1, 2009; or

5. Status as a sibling of a child described in subparagraph 1. or 4. of this paragraph to be placed in the same adoption placement as the child; and

(b) Not have a parent with custody or legal claim to the child.

(4) Eligibility for Aid for Families with Dependent Children specified in subsection (3)(a)1. of this section shall not apply to a child in accordance with 42 U.S.C. 673(e).

(5) If an adoption assistance agreement is terminated in accordance with Section 7 of this administrative regulation or the adoption assistance is reduced~~[renegotiated]~~ for a period of time in accordance with 922 KAR 1:530, a child previously eligible for federal Title IV-E adoption assistance shall be treated as having the same financial circumstances as the child had when originally adopted.

Section 3. Parental Standards. A parent receiving a child eligible for adoption assistance shall meet the same standards as those applied to other adoptive applicants in accordance with:

(1) 922 KAR 1:350; or

(2) 922 KAR 1:310.

Section 4. Adoptive~~[Adoption]~~ Placement Agreement.

(1) Prior to a prospective adoptive parent receiving an adoption subsidy, the prospective adoptive parent and a cabinet representative shall review and sign an adoptive~~[the adoption]~~ placement agreement.

(2) The adoptive~~[adoption]~~ placement agreement shall advise the prospective adoptive parent of the:

(a) Special needs of the child;

(b) Cabinet's expectations; and

(c) Services offered by the cabinet to assist the prospective adoptive parent in the adoption process.

Section 5. Adoption Assistance Agreement.

(1) ~~Prior~~~~[At the time of or prior]~~ to finalization of the adoption, an adoptive parent and the cabinet shall discuss~~[negotiate]~~ and sign an adoption assistance agreement that shall:

(a) Be in effect in accordance with 42 U.S.C. 675(3) and 45 C.F.R. 1356.40(b);

(b) Determine the nature and amount of the adoption subsidy; and

(c) Remain in effect until terminated, even if the adoptive parent moves out of the Commonwealth of Kentucky.

(2) If an adoption is finalized, the cabinet shall pay nonrecurring adoption expenses incurred by an adoptive parent during the adoption of a special needs child pursuant to 45 C.F.R. 1356.41.

(3) If a child is eligible for adoption assistance under 42 U.S.C. 673(a)(2)(A)(ii)(I)(bb), the requirement of Section 4(1) of this administrative regulation shall be waived.

(4) An adoption assistance payment shall begin on the date agreed to~~[that the adoption assistance agreement is signed]~~ by the

adoptive parent and cabinet representative, as documented on the adoption assistance agreement.

(5)

(a) The amount of federal Title IV-E adoption assistance shall not exceed the amount that would be paid for foster care maintenance for the same child, in accordance with 42 U.S.C. 673(a)(3), including medically complex~~[-fragile]~~, specialized medically complex~~[-fragile]~~, and care plus foster care per diem reimbursements established by the Department for Community Based Services.

(b) A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance in excess of:

1. A care plus or medically complex foster care per diem reimbursement established by the Department for Community Based Services; or

2. The therapeutic foster care per diem reimbursed by the child-placing agency on behalf of the child unless~~if~~ the:

- a. Dollar amount is necessary to meet the child's needs; and
- b. Commissioner or designee approves.

Section 6. Federal Title IV-E Adoption Assistance.

(1) Federal Title IV-E adoption assistance shall continue in accordance with KRS 199.557 and 42 U.S.C. 673(a)(4) until the child reaches age:

- (a) Eighteen (18); or
- (b) Twenty-one (21), if the child:

1. Has a signed adoption assistance agreement on or after his or her sixteenth birthday and is:

a. Completing secondary education or a program leading to an equivalent credential;

b. Enrolled in an institution that provides post-secondary or vocational education;

c. Participating in a program or activity designed to promote or remove barriers to employment; or

d. Employed for at least eighty (80) hours per month; or

2. Is~~is~~ determined to have a disability in accordance with subsection (2) of this section.

(2) Disability determination.

(a) In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), an adopted special needs child shall have a disability that warrants continuation of the child's federal Title IV-E adoption assistance if the child has been determined to meet the definition of permanent or total disability pursuant to 42 U.S.C. 1382c(a)(3) by either the:

1. Social Security Administration; or
2. Medical review team of the cabinet.

(b) In making a child's disability determination, the medical review team shall consider:

1. The child's medical history and subjective complaint regarding an alleged physical or mental disability, illness, or impairment; and

2. Competent medical testimony relevant to whether:

a. A physical or mental disability, illness, or impairment exists; and

b. The disability, illness, or impairment is sufficient to reduce the child's ability to gain full-time employment or pursue opportunities in a state or federal education program.

(c) Other factors to be considered by the medical review team in making a determination shall include the child's:

1. Age;
2. Employment history;
3. Educational background; and
4. Subjective complaint regarding the alleged effect of the physical or mental condition on the child's ability to support and care for self.

(d) The child shall be referred, if necessary, for further appraisal of his or her abilities.

(e) If the medical review team makes the disability determination, the medical review team shall provide a written report of the determination under this subsection to the cabinet and the:

1. Child, if the child is age eighteen (18) or older; or
2. Adoptive parent, if the child is under age eighteen (18).

(3) Federal Title IV-E adoption assistance may include:

(a) Nonrecurring adoption expenses not to exceed \$2,000~~[\$1,000]~~ incurred in the adoption of a special needs child; and

(b) An adoption subsidy.

Section 7. Termination of Adoption Assistance Payments. In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), federal Title IV-E adoption assistance payments shall be terminated if:

(1) The adoptive parent requests;

(2) The child reaches age:

(a) Eighteen (18); ~~or~~

(b) Twenty-one (21), if the child has met a requirement of Section 6(1)(b)~~is determined to have a disability in accordance with Section 6(2)]~~ of this administrative regulation; or

(c) Eighteen (18) to twenty-one (21), if the child no longer meets a requirement of Section 6(1)(b) of this administrative regulation.

(3) The cabinet determines that the:

(a) Adoptive parent is no longer legally responsible for the support of the child pursuant to KRS Chapter 625; or

(b) Child is no longer receiving support from the adoptive parent; or

(4) No~~An~~~~No~~ adoptive parent who signed the adoption assistance agreement remains~~does not remain~~~~remains~~ living.

Section 8. Adoption Assistance Reduction.

(1) Adoption assistance shall be reduced if the adoptive parent fails to provide documentation demonstrating financial responsibility and support after the cabinet has requested the documentation in writing from the adoptive parent at least three (3) times.

(2) The cabinet shall resume adoption assistance payments, including any needed adjustments to the adoption assistance agreement, once the adoptive parent has provided the requested documentation demonstrating financial responsibility and support of the child.

Section 9.~~Section 8.~~ Adoption Assistance Renegotiation.

(1) Renegotiation of an adoption assistance agreement may be requested by the adoptive parent before or after the adoption is finalized in accordance with 42 U.S.C. 673 or 922 KAR 1:530.

(2) The renegotiated amount of federal Title IV-E adoption assistance payments shall be agreed upon by the:

- (a) Adoptive parent; and
- (b) Cabinet.

(3) If the adoption assistance payment is renegotiated in accordance with subsections (1) and (2) of this section, the cabinet and adoptive parent shall sign a new adoption assistance agreement.

(4) Federal Title IV-E adoption assistance payments shall not be changed by a move of the adoptive parents out of the state or country.

Section 10.~~Section 9.~~ Service Appeal. An applicant for adoption assistance payments or an adoptive family aggrieved by a cabinet action may request review through~~shall be granted~~ an administrative hearing in accordance with 922 KAR 1:320.

Section 11.~~Section 10.~~ Notice of Change.

(1) Cabinet staff shall provide notice of a reduction or termination of adoption assistance payments:

- (a) Ten (10) calendar days in advance; and
- (b) In accordance with 922 KAR 1:320, Section 6.

(2) In accordance with 42 U.S.C. 673, an adoptive parent shall notify the cabinet of any change in circumstance that would make the adoptive parent ineligible for adoption assistance payments or change the amount of the adoption assistance payment.

Section 12.~~Section 11.~~ Extraordinary Medical Expenses. In accordance with KRS 199.555(6) or 922 KAR 1:050, an adoptive child shall be eligible for assistance with extraordinary medical expenses.

Section 13. Annual Family Contact.

(1) Annual contact with the adoptive family shall be made by mail, email, phone, home visit, or other cabinet method of contact to determine that the:

- (a) Child remains in the adoptive home;
- (b) Parent continues to provide care and support for the child;

and

(c) Adoption assistance payments continue to meet the special needs of the child.

(2) The cabinet may conduct a home visit after an adoption assistance annual contact is made by mail, email, phone, or other cabinet method of contact:

(a) If:

1. The adoptive parent requests a home visit;

2. The special needs of the child change, as indicated by the adoptive parent;

3. Attempts to update information by ~~[additional]~~ mail, email, phone, or other cabinet method of contact have failed; or

4. The cabinet receives information that is contrary to the information verified by the adoptive parent during the annual contact; or

(b) In accordance with 922 KAR 1:330. LESA DENNIS, Commissioner

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**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, November 13, 2024)**

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), 216.2955, 216B.015, 403.352, 600.020(1), (40), [(64)], (62), (63), 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

(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[~~er~~]", 8/2024[4/2022]; and
- (b) "DCC-374, Child Care Central Registry Check[~~er~~]", 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/dcbcs/Pages/default.aspx>.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, November 13, 2024)

922 KAR 2:090. Child-care center licensure.

RELATES TO: KRS Chapter 13B, Chapter 157, 158.030, 199.011(3), (4), (16), ~~[199.892, 199.894(1), (3), 199.895, 199.896-199.898, 214.010, 214.036, 314.011(5), 600.020(1), 620.020(8), 620.030, 45 C.F.R. 98.2, 98.41, 98.43, 42 U.S.C. 601-619, 19831-9852, 9858c, f, 9857-9858]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

Section 1. Definitions.

(1) "Applicant" means an individual or entity applying to become a licensee or renew status as a licensee.

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

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

(4) "Child care" means care of a child in a center or home that regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(5) "Child-care center" is defined by KRS 199.894(3).

(6) "Contract substitute staff member" means a person who temporarily assumes the duties of a regular staff person, meets the requirements established in Section 12 of this administrative regulation, and receives payment from a contract entity rather than the child-care[~~child-care~~] center.

(7) "Director" means an individual who meets the education and training requirements established in Section 10 of this administrative regulation.

(8) "Finding of fraud" means a suspected intentional program violation referred in accordance with 922 KAR 2:020, Section 4(4)(a)1, that is accepted for investigation and substantiated by the cabinet's Office of the Inspector General.

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

- (a) Physician;
- (b) Physician assistant;
- (c) Advanced practice registered nurse; or
- (d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

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

(11) "Instructional program" means a program operated by a business, educational institution, sole proprietor, or government entity that only serves school-aged children in providing specialized instruction or the continuation of learning outside the time period when school is in session.

(12) "Licensee" means the owner or operator of a child-care center to include:

- (a) Sole proprietor;
- (b) Corporation;
- (c) Limited liability company;
- (d) Partnership;
- (e) Association; or
- (f) Organization, such as:
 - 1. Board of education;
 - 2. Private school;
 - 3. Faith-based organization;
 - 4. Government agency; or
 - 5. Institution.

(13)[(12)] "Nontraditional hours" means the hours of:

- (a) 7 p.m. through 5 a.m. Monday through Friday; or
- (b) 7 p.m. on Friday until 5 a.m. on Monday.

(14)[(13)] "Parent" is defined by 45 C.F.R. 98.2.

(15)[(14)] "Parental or family participation" means a child-care center's provision of information or inclusion of a child's parent in the child-care center's activities, including:

- (a) Distribution of a newsletter;
- (b) Distribution of a program calendar; or
- (c) A conference between the provider and a parent.

(16)[(15)] "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(17)[(16)] "Premises" means the building and contiguous property in which child care is licensed.

(18)[(17)] "Preschool-age" means a child who is older than a toddler and younger than school-age.

(19)[(18)] "Qualified substitute" means a person who meets the requirements of a staff person established in Section 11 of this administrative regulation.

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

(21)[(20)] "Secretary" is defined by KRS 199.011(16).

(22) "Staff" means an individual who is employed by the child-care center for compensation and meets the education and training requirements established in Section 11 of this administrative regulation.

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

(24) "Visitor" means an individual who is on the premises[~~premise~~] of the child-care center, but ~~does~~[~~shall~~] not[~~;~~]

(a) Receive compensation from the child-care center, unless the individual is[~~they are~~] performing a skilled craft in which he or she is[~~they are~~] certified or trained to perform outside of child care program duties;

(b) Have[~~Be required~~] to meet the requirements of child-care center or contract substitute staff;

(c) Count towards staff-to-child ratios and group size; and

(d) Perform child care program duties, unless he or she is[~~they are~~] a direct family member participating in an activity or providing assistance for only his or her child or children.

(25) "Volunteer" means:

- (a) An individual who:
 - 1. Performs hours of service without promise or expectation of receiving compensation;
 - 2. Performs services freely and without pressure or coercion, direct or implied;

3. ~~[Shall not be considered a volunteer if the individual]~~ is not otherwise employed by the child-care center to perform the same type of services as staff; and

4. ~~[Shall] Only counts [count] towards staff-to-child ratios and group size if when~~ in the presence of a qualified staff member; or

~~(b) A student trainee enrolled in high school or a secondary education program earning educational credit.~~

Section 2. Child-Care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center. This child-care center shall be licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee; and

(2) A Type II child-care center. This child-care center shall be the primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. The following child-care settings shall be exempt from licensure requirements of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280:

(1) Summer camps permitted by the cabinet as youth camps that serve school-age children;

(2) Kindergarten through grade 12 in private schools while school is in session;

(3) All programs and preschools regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization that a child attends no longer than two (2) weeks;

(5) Child care provided while parents are on the premises, other than the employment and educational site of parents;

(6) Child care programs operated by the armed services located on an armed forces base;

(7) Child care provided by educational programs that include parental involvement with the care of the child and the development of parenting skills;

(8) Facilities operated by a religious organization while religious services are being conducted;

(9) A child care program providing instructional and educational programs that:

(a) Operates for a maximum of twenty (20) hours per week; and

(b) A child attends for no more than ten (10) hours per week;

(10) A child-care center that meets the requirements of KRS 199.896(19) or (20); and

(11) An after-school program, which is:

(a) A continuation of the school day during the academic year;

(b) Operated and staffed by an accredited private or public school under the purview of the Kentucky Department of Education; and

(c) Not participating in the Child Care Assistance Program in accordance with 922 KAR 2:160; and

(12) An instructional program for school-age children that demonstrates to the cabinet that the requirements established in KRS 199.896(21) have been met.

Section 4. Application.

(1) An applicant for a license shall submit to the cabinet a completed OIG-DRCC-01, Initial Child-Care Center License Application.

(2) Approval of an applicant for initial licensure shall result in the issuance of a preliminary license for a probationary period not to exceed six (6) months.

(3) The issuance of a preliminary license, or the issuance or reapproval of a regular license, shall be governed under the provisions of this section and Sections 6 and 7 of this administrative regulation.

(4) If the applicant for licensure is a:

(a) Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) Partnership, the application shall include:

1. A written statement from each partner assuring that the partnership is current and viable; and

2. Proof that each individual is twenty-one (21) years or older by photo identification or birth certificate.

(5) If the status of a corporation, partnership, or ownership of the child-care center changes, the new entity shall submit a completed OIG-DRCC-01.

(6) If ownership of a child-care center changes and the cabinet approves preliminary licensure upon inspection of the child-care center under the new ownership, the effective date on the preliminary license shall be the date of the approved inspection under the new ownership.

(7) The cabinet shall return the OIG-DRCC-01 and accompanying fee to an applicant if the applicant:

(a) Has an ownership interest in a facility that is licensed or regulated by the cabinet, and that is subject to a finding of fraud or is involved in an investigation of alleged fraud by:

1. The cabinet's Office of the Inspector General; or

2. An agency with investigative authority; and

(b) Is requesting a:

1. Change in ownership; or

2. License for a new facility.

(8) An applicant shall submit to background checks in accordance with 922 KAR 2:280.

(9) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 5. Evacuation Plan.

(1) A licensed child-care center shall have a written evacuation plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895 and 42 U.S.C. 9858c(c)(2)(U).

(2) The cabinet shall post an online template of an evacuation plan that:

(a) Fulfills requirements of KRS 199.895;

(b) Is optional for a child-care center's use; and

(c) Is available to a licensed child-care center without charge.

Section 6. License Issuance.

(1) The cabinet shall monitor a child-care center that operates under a preliminary license issued pursuant to Section 4(2) of this administrative regulation.

(2) Upon completion of the probationary period required in Section 4(2) of this administrative regulation, the cabinet shall:

(a) Approve regular licensure for a child-care center operating under a preliminary license; or

(b) If a condition specified in Section 17 of this administrative regulation exists, deny regular licensure.

(3) A preliminary or regular license shall not be issued unless each background check required by 922 KAR 2:280 has been completed on behalf of an applicant for licensure.

(4) Background checks in accordance with 922 KAR 2:280 shall apply to:

(a) An applicant;

(b) A director;

(c) An employee who is present during the time a child is receiving care;

(d) Any person with supervisory or disciplinary control over a child in care; or

(e) A person in accordance with 42 U.S.C. 9858f and 45 C.F.R. 98.43.

(5) If an applicant for licensure has had a previous ownership interest in a child-care program~~[provider]~~ that has had a prior certification, license, or registration denied, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action, the cabinet shall grant the applicant a license if:

(a) A seven (7) year period has expired from the:

1. Date of the prior denial or revocation;

2. Date the certification, license, or registration was voluntarily relinquished as a result of an investigation or pending adverse action;

3. Last day of legal remedies being exhausted; or

4. Administrative hearing decision; and

(b) The applicant has:

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1. Demonstrated compliance with the provisions of this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896;

2. Completed, since the time of the prior denial, revocation, or relinquishment, sixty (60) hours of training in child development and child care practice, approved by the cabinet or its designee; and

3. Not had an application, certification, license, or registration denied, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action:

a. For one (1) of the reasons set forth in:

(i) KRS 199.896[~~(19)~~]; or

(ii) 922 KAR 2:280; or

b. Due to a disqualification from:

(i) The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

(ii) Another governmental assistance program for fraud, abuse, or criminal conviction related to that program.

(6) If a license is granted after the seven (7) year period specified in subsection (5)(a) of this section, the licensee shall serve a two (2) year probationary period during which the child-care center shall be inspected no less than semi-annually.

(7) A preliminary or regular license shall specify:

(a) A particular premises;

(b) A designated licensee;

(c) Age category of the children in care;

(d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee or an employee, based upon:

1. Available space as determined by the State Fire Marshal's Office in conjunction with the cabinet;

2. Adequacy of program;

3. Equipment; and

4. Staff;

(e) If provided, nontraditional hours;

(f) If provided, transportation; and

(g) A list of services to be provided by the child-care center.

(8) To qualify for a preliminary license, or maintain a regular license, a child-care center shall:

(a) Provide written documentation from the local authority showing compliance with local zoning requirements;

(b) Be approved by the Office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county, and state laws;

(d) Provide written proof of liability insurance coverage of at least \$100,000 per occurrence;

(e) Comply with provisions of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280;

(f) Cooperate with the cabinet, the cabinet's designee, or another agency with regulatory authority during:

1. An investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030; and

2. Unannounced inspections; and

(g) Have a director who meets the requirements listed in Section 10 of this administrative regulation.

(9) A child-care center shall allow the cabinet or its designee, another agency with regulatory authority, and a parent of an enrolled child unannounced access to the child-care center during the hours of operation.

(10) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet or another agency with regulatory authority, to enter the child-care center or deny access to records relevant to the inspection shall result in the cabinet pursuing adverse action in accordance with Section 16, 17, or 18 of this administrative regulation.

(11) A regular license shall be issued if the center has met the requirements contained in this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896(3), (15), (16), (18), (19), and ~~(22)~~(24).

(12) A preliminary or regular license shall not be sold or transferred.

(13) A child-care center shall not begin operation without a preliminary license to operate from the cabinet.

(14) A child-care center operating without a preliminary or regular license shall be subject to legal action.

(15) The voluntary relinquishment of a preliminary or regular license shall not preclude the cabinet's pursuit of adverse action.

Section 7. Fees.

(1) A nonrefundable initial licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

(2) A nonrefundable renewal fee of twenty-five (25) dollars shall be charged in accordance with KRS 199.896(3).

(3) Licensing fees shall be:

(a) Payable to the Kentucky State Treasurer;

(b) Attached to the licensure application; and

(c) Paid by:

1. Cashier's check;

2. Certified check;

3. Business check; or

4. Money order.

Section 8. General.

(1) A licensee shall:

(a) Be responsible for the operation of the child-care center pursuant to this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280; and

(b) Protect and ~~ensure~~assure the health, safety, and comfort of each child.

(2) Child-care center staff shall be:

(a) Instructed by the child-care center's director regarding requirements for operation; and

(b) Provided with a copy of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280.

(3) A volunteer, visitor, or board member shall comply with the policies and procedures of the child-care center.

(4) Program policies and procedures shall:

(a) Be in writing; and

(b) Include:

1. Staff policies;

2. Job descriptions;

3. An organization chart;

4. Chain of command; and

5. Other procedures necessary to ensure implementation of:

a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;

b. 922 KAR 2:120, Child-care center health and safety standards;

c. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals; and

d. This administrative regulation.

(5) An activity of a person living in a child-care center that is a dwelling unit shall not interfere with the child-care center program.

(6) In addition to the posting requirement of KRS 199.898(3), a child-care center shall post the following in a conspicuous place and make available for public inspection:

(a) The provider's preliminary or regular license;

(b) Each statement of deficiency and civil penalty notice issued by the cabinet during the current licensure year;

(c) Each plan of correction submitted by the child-care center to the cabinet during the current licensure year;

(d) Information on the Kentucky Consumer Product Safety Program and the program's Web site as specified in KRS 199.897;

(e) A description of services provided by the child-care center, including:

1. Current rates for child care; and

2. Each service charged separately and in addition to the basic rate for child care;

(f) Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and

(g) Daily planned program.

(7) If a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with a child in care is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance

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with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

- (a) For the duration of the assessment or investigation; and
- (b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

Section 9. Records.

(1) A child-care center shall maintain:

- (a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;
- (b) A written record for each child:
 - 1. Completed and signed by the child's parent;
 - 2. Retained on file on the first day the child attends the child-care center; and
 - 3. To contain:
 - a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;
 - b. Contact information to enable a person in charge to contact the child's:
 - (i) Parent at the parent's home or place of employment;
 - (ii) Family physician; and
 - (iii) Preferred hospital;
 - c. The name of each person who is designated in writing to pick-up the child;
 - d. The child's general health status and medical history including, if applicable:
 - (i) Allergies;
 - (ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and
 - (iii) Permission from the parent for third-party professional services in the child-care center;
 - e. The name and phone number of each person to be contacted in an emergency involving or impacting the child;
 - f. Authorization by the parent for the child-care center to seek emergency medical care for the child in the parent's absence; and
 - g. A permission form for each trip off the premises, and allergy care plan if applicable, signed by the child's parent in accordance with 922 KAR 2:120, Section 14[12];
 - (c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 14[13], if a child receives services from the child-care center through the Child Care Assistance Program;
 - (d) A written schedule of staff working hours;
 - (e) A current personnel file for each child-care center staff person to include:
 - 1. Name, address, date of birth, and date of employment;
 - 2. Proof of educational qualifications;
 - 3. Record of annual performance evaluation;
 - 4. Documentation of compliance with tuberculosis screening in accordance with Section 11(1)(b) of this administrative regulation; and
 - 5. The results of background checks conducted in accordance with 922 KAR 2:280;
 - (f) A written annual plan for child[-]care staff professional development;
 - (g) A written evacuation plan in accordance with Section 5 of this administrative regulation;
 - (h) A written record of quarterly practiced earthquake drills and tornado drills detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;
 - (i) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;
 - (j) A written plan and diagram outlining the course of action in the event of a natural or manmade disaster, including drills posted in a prominent place and provided to all staff, volunteers, and visitors;
 - (k) A written record of reports to the cabinet required in Section 13 of this administrative regulation; and

(l) A written record of transportation services provided in accordance with 922 KAR 2:120, Section 14[12].

(2) A child-care center shall:

- (a) Maintain the confidentiality of a child's record and information concerning a child or the child's parent;
 - (b) Maintain all records for five (5) years; and
 - (c) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030.
- (3) A child-care center shall not falsify records required by this section or a staff member's training record.

Section 10. Director Requirements and Responsibilities.

(1) A director shall:

- (a) Be at least twenty-one (21) years of age;
 - (b) Have a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;
 - (c) Not be employed in a position other than an onsite child care director, or director of multiple facilities, during the hours the child-care center is in operation;
 - (d) Ensure:
 - 1. Compliance with 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation; and
 - 2. The designation of one (1) adult staff person in charge to carry out the director's duties if the director is not present in the child-care center during operating hours. The director shall be responsible for the actions of the designee during the director's absence;
 - (e) Manage the staff in their individual job descriptions;
 - (f) Ensure[Assure] the development, implementation, and monitoring of child-care center plans, policies, and procedures for staff, volunteers, and visitors;
 - (g) Supervise staff, volunteers, and visitors conduct to ensure implementation of program policies and procedures;
 - (h) Post a schedule of daily activities, to include dates and times of activities to be conducted with the children in each classroom;
 - (i) Conduct, manage, and document in writing recurring staff meetings;
 - (j) Assess each staff person's interaction with children in care and classroom performance through an annual written performance evaluation;
 - (k) Ensure[Assure] that additional staff are available during cooking and cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;
 - (l) Notify the parent immediately of an accident or incident requiring medical treatment of a child;
 - (m) Ensure[Assure] that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the background checks as established in 922 KAR 2:280;
 - (n) Ensure[Assure] each mandatory record specified in Section 9 of this administrative regulation has not been altered or falsified;
 - (o) Coordinate at least one (1) annual activity involving parental or family participation; and
 - (p) Not have had previous ownership interest in a child-care program[provider] that had its certification, license, or registration denied or revoked.
- (2) The director of a Type I child-care center shall meet one (1) of the following educational requirements:
- (a) Master's degree in education or child development field;
 - (b) Bachelor's degree in education or child development field;
 - (c) Master's degree or a bachelor's degree in a field other than education or child development, including a degree in pastoral care and counseling, plus twelve (12) clock hours of child development training;
 - (d) Associate degree in Early Childhood Education and Development;
 - (e) Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children;
 - (f) A Director's Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;
2. An early childhood development program, such as Head Start; or
3. A licensed or certified child-care program;
- (g) Child development associate plus one (1) year of verifiable paid experience working directly with children in:
 1. A school-based program following Department of Education guidelines;
 2. An early childhood development program, such as Head Start; or
 3. A licensed or certified child-care program;
- (h) Three (3) years of verifiable full-time paid experience working directly with children in:
 1. A school-based program following Department of Education guidelines;
 2. An early childhood development program, such as Head Start; or
 3. A licensed or certified child-care program.
- (3) The director of a Type II child-care center shall:
 - (a) Meet the requirements in subsection (2) of this section; or
 - (b) Meet two (2) of the following:
 1. Have twelve (12) hours of orientation and child development training;
 2. Have one (1) year of verifiable full-time paid experience working directly with children in:
 - a. A school-based program following Department of Education guidelines;
 - b. An early childhood development program, such as Head Start; or
 - c. A licensed or certified child-care program;
 3. Obtain six (6) additional hours of training in child day care program administration.

Section 11. Staff Requirements.

- (1) Child-care center staff:
 - (a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have a:
 1. High school diploma;
 2. GED or qualifying documentation from a comparable educational entity; or
 3. Commonwealth Child Care Credential as described in 922 KAR 2:250; and
 - (b) Shall provide, prior to employment and every two (2) years thereafter:
 1. A statement from a health professional that the individual is free of active tuberculosis; or
 2. A copy of negative tuberculin results.
 - (2)
 - (a) A child-care center shall not employ a person:
 1. With a disqualifying background check result in accordance with 922 KAR 2:280; or
 2. Determined by a physician to have a health condition that renders the person unable to care for children.
 - (b) An individual described in Section 6(4) of this administrative regulation shall report to the licensee if the individual:
 1. Meets a disqualifying criterion or has a disqualifying background check result as specified in 922 KAR 2:280;
 2. Is the subject of a cabinet child abuse or neglect investigation; or
 3. Is determined by a physician to have a health condition that renders the person unable to care for children.
 - (3) For a child-care center licensed for infant, toddler, or preschool-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:
 - (a) Infant and child cardiopulmonary resuscitation; and
 - (b) Infant and child first aid.
 - (4) For a child-care center licensed for school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:
 - (a) Adult cardiopulmonary resuscitation; and

- (b) First aid.
- (5) Cardiopulmonary resuscitation (CPR) and first aid training shall be in addition to the fifteen (15) clock hours requirement in subsection (16) of this section.
- (6) Child-care centers shall have available if needed in case of need:
 - (a) One (1) qualified substitute staff person for a Type II child-care center; or
 - (b) Two (2) qualified substitute staff persons for a Type I child-care center.
- (7) Each qualified substitute staff person shall:
 - (a) Meet the staff requirements of this administrative regulation; and
 - (b) Provide the required documentation to verify compliance with this administrative regulation.
- (8) A qualified substitute who works in more than one (1) licensed child-care center shall provide the required documentation to verify compliance with this administrative regulation at the time of employment with each child-care center.
- (9) If the operator of a Type II child-care center is unable to provide care in accordance with this administrative regulation, 922 KAR 2:280, or 922 KAR 2:120, the Type II child-care center shall:
 - (a) Close temporarily until the operator is able to resume compliance; and
 - (b) Immediately notify parents of enrolled children of the temporary closure.
- (10) The minimum number of adult workers in a child-care center shall be sufficient to ensure that:
 - (a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed;
 - (b) Each staff person under eighteen (18) years of age and each student trainee are under the direct supervision of a qualified staff person who meets the requirements of this section; and
 - (c) Unless providing care with a qualified staff person, a person under the age of eighteen (18) shall not be counted as staff for the staff-to-child ratio.
- (11) Except for medication as prescribed by a physician, a controlled substance shall not be permitted on the premises during hours of operation.
- (12) Alcohol shall:
 - (a) Not be consumed by any person on the licensed child-care center's premises during hours of operation; and
 - (b) Be kept out of reach and sight of a child in care.
- (13) Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2 ~~(12)(11)~~ (f).
- (14) For each adult residing at a Type II child-care center, the results of the following shall be maintained on file at the center:
 - (a) Background checks conducted in accordance with 922 KAR 2:280; and
 - (b) A copy of negative tuberculin results or a health professional's statement documenting that the adult is free of tuberculosis.
- (15) If a new adult begins residing in a Type II child-care center, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household.
- (16) In accordance with KRS 199.896(15) and (16), a staff person with supervisory authority over a child shall complete the following:
 - (a) Six (6) hours of cabinet-approved orientation completed within the first three (3) months of employment in a child care program covering the following topics:
 1. Federal minimum health and safety requirements established in 45 C.F.R. 98.41 related to:
 - a. Prevention and control of infectious diseases, including immunization;
 - b. Prevention of sudden infant death syndrome and use of safe sleeping practices;
 - c. Administration of medication, consistent with standards for parental consent;
 - d. Prevention of and response to emergencies due to food and allergic reactions;

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

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

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

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

i. Precautions in transporting children;

2. Recognizing and reporting child abuse; and

3. Developmentally appropriate practices;

(b) Nine (9) hours of cabinet-approved early care and education training within the first year of employment in a child care program, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training; and

(c) Fifteen (15) hours of cabinet-approved early care and education training completed between July 1 and the following June 30 of each subsequent year of employment in a child care program, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training completed once every five (5) years.

(17) A staff person's compliance with training requirements of this section shall be verified through the cabinet-designated database maintained pursuant to 922 KAR 2:240.

(18) A staff person shall not repeat online training courses, including pre-service orientation, unless:

(a) Five (5) years have passed since the online training was completed; or

(b) He or she is [They are] required to as part of a disciplinary directive by a state agency.

(19) A staff person shall not accumulate more than fifteen (15) hours of training in a twenty-four (24) hour period.

Section 12. Contract Substitute Staff Member Requirements.

(1) A contract substitute staff member shall:

(a) Comply with the training requirements established in Section 11 of this administrative regulation;

(b) Be employed by an outside agency and provide the required documentation to verify the contractual agreement between the licensed child-care center and the outside agency;

(c) Provide a hard copy file containing all required staff records to be kept on-site at the licensed child-care center and maintained at the center for five (5) years;

(d) Be entered into the cabinet-designated database as a staff member of the outside organization in accordance with 922 KAR 2:240;

(e) Be the responsibility of the licensed child-care center while working on-site; and

(f) Have supervisory authority over a child only if the requirements of 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation are met.

(2) Except for an employee of a child-care center program authorized by 42 U.S.C. 9831-9852, an owner or employee of a contract agency possessing a Kentucky Early Care and Education Trainer's Credential shall not train an employee of the same contract agency in order to meet the training requirements established in:

(a) KRS 199.896(15) and (16), 922 KAR 2:180, 922 KAR 2:240, 922 KAR 2:250, 922 KAR 2:270, or this administrative regulation; or

(b) A child development associate credential.

Section 13. Reports.

(1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery:

(a) Communicable disease, pursuant to 902 KAR 2:020, which shall also be reported to the local health department[pursuant to KRS 214.040];

(b) An accident or injury to a child that requires medical care initiated by the child-care center or the child's parent;

(c) An incident that results in legal action by or against the child-care center that:

1. Affects a child or staff person; or

2. Includes the center's discontinuation or disqualification from a governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

(d) An incident involving fire or other emergency, including a vehicular accident if when the center is transporting a child receiving child care services;

(e) A report of child abuse or neglect that:

1. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

2. Names a director, employee, volunteer, or person with supervisory or disciplinary control over, or having unsupervised contact with, a child in care as the alleged perpetrator; or

(f) An individual specified in Section 6(4) of this administrative regulation meeting a disqualifying criterion or background check result pursuant to 922 KAR 2:280.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee shall report to the cabinet within one (1) week:

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirements of Section 10 of this administrative regulation.

(4)

(a) Written notification of the following shall be:

1. Made to the cabinet, in writing, to allow for approval before implementation:

a. Change of ownership;

b. Change of location;

c. Increase in capacity;

d. Change in hours of operation;

e. Change of services in the following categories:

(i) Infant;

(ii) Toddler;

(iii) Preschool-age;

(iv) School-age;

(v) Nontraditional hours; or

(vi) Transportation; or

f. Addition to or reduction of the square footage of a child-care center's premises; and

2. Signed by each owner listed on the preliminary or regular license.

(b) The cabinet or its designee shall not charge a fee for acting upon reported changes.

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6) The cabinet and the parent of a child enrolled in a child-care center shall receive notice as soon as practicable, and prior to, a child-care center's temporary or permanent closure.

Section 14. Annual Renewal.

(1)

(a) A regular license shall expire one (1) year from the effective date or last renewal date unless the licensee renews the regular license in accordance with this section and KRS 199.896(3).

(b) A preliminary license shall expire six (6) months from the date of issuance.

(c) A regular license that expires shall lapse and shall not be subject to appeal.

(2) A licensee seeking renewal of a regular license shall:

(a) Submit one (1) month prior to the anniversary of the regular license's effective date, an OIG-DRCC-06, Child-Care Center License Renewal Form;

(b) Meet the requirements specified in Sections 4 through 13 of this administrative regulation; and

(c) Pay the nonrefundable renewal fee in accordance with Section 7 of this administrative regulation.

(3) If requirements of subsection (1) of this section are met, the cabinet shall renew the license in the form of a validation letter.

(4) An application for renewal shall be denied in accordance with Section 17 of this administrative regulation.

Section 15. Statement of Deficiency and Corrective Action Plans.

(1) If a child-care center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a child-care center shall submit a written corrective action plan to the cabinet or its designee within fifteen (15) calendar days of the date of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

- (a) Specific action undertaken to correct a violation;
- (b) The date action was or shall be completed;
- (c) Action utilized to ~~ensure~~^{assure} ongoing compliance;
- (d) Supplemental documentation requested as a part of the plan;

and

(e) Signature of the licensee or designated representative of the licensee and the date of signature.

(4) The cabinet or its designee shall review the plan and notify the child-care center within thirty (30) calendar days of receipt of the plan, in writing, of the decision to:

- (a) Accept the plan;
- (b) Not accept the plan; or
- (c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 17 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(6) A child-care center notified of the unacceptability of its plan shall:

(a) Within fifteen (15) calendar days of the notification's date, submit an amended plan; or

(b) Have its license revoked or denied for failure to:

1. Submit an acceptable amended plan in accordance with KRS 199.896(4); or

2. Implement the corrective measures identified in the plan of correction.

(7) The cabinet shall not review or accept more than three (3) corrective action plans from a licensed child-care center in response to the same written statement of deficiency.

(8) If a licensed child-care center fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall deny or revoke the center's license.

(9) The administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days from the date of the statement of deficiency in accordance with KRS 199.896(5)(c).

Section 16. Directed Plan of Correction (DPOC). If the cabinet determines that a child-care center is in violation of this administrative regulation, 922 KAR 2:120, or 922 KAR 2:280, based on the severity of the violation, the cabinet:

(1) Shall enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance;

(2) Shall notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC has been imposed;

(3) Shall increase the frequency of monitoring by cabinet staff;

(4) May require the provider to participate in additional training; and

(5) May amend the agreement with the provider if the cabinet identifies an additional violation during the DPOC.

Section 17. Basis for Denial, Suspension, or Revocation.

(1)

(a) The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896 if the applicant for licensure, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, or 922 KAR 2:190.

(b) A licensee whose regular license is suspended or revoked shall:

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

2. Post the new license certificate in accordance with Section 8(6) of this administrative regulation.

(2) Emergency action.

(a) The cabinet shall take emergency action in accordance with KRS 199.896(4) by issuing an emergency order that suspends a child-care center's license.

(b) An emergency order shall:

1. Be served to a licensed child-care center in accordance with KRS 13B.050(2); and

2. Specify the regulatory violation that caused the emergency condition to exist.

(c) Upon receipt of an emergency order, a child-care center shall surrender its license to the cabinet.

(d) The cabinet or its designee and the child-care center shall make reasonable efforts to:

1. Notify a parent of each child in care of the center's suspension; and

2. Refer a parent for assistance in locating alternate child care arrangements.

(e) A child-care center required to comply with an emergency order issued in accordance with this subsection may submit a written request for an emergency hearing within twenty (20) calendar days of receipt of the order to determine the propriety of the licensure's suspension in accordance with KRS 199.896(7).

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).

(g)

1. Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency order to suspend licensure.

2. The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(h) A provider's license shall be revoked if the:

1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or

2. Condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

(3) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(4) Unless an applicant for a license meets requirements of Section 6(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if:

(a) The applicant has had previous ownership interest in a child-care provider that had its certification, license, or registration denied or revoked;

(b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;

(c) An appeal of a denial or revocation is pending;

(d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:120, 922 KAR 2:280, 922 KAR 2:190, this administrative regulation, or another administrative regulation effective at the time;

(e) An individual with ownership interest in the child-care center has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

(f) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied, revoked, or voluntarily relinquished as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity;

(g) The applicant listed as an officer, director, incorporator, or organizer of a corporation or limited liability company whose child-care center license was denied, revoked, or voluntarily relinquished as described in paragraph (a) through (d) of this subsection within the past seven (7) years;

(h) The applicant knowingly misrepresents or submits false information on a form required by the cabinet;

(i) The applicant interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;

(j) The applicant's background check reveals that the applicant is disqualified in accordance with 922 KAR 2:280;

(k) The applicant has been the subject of more than two (2) directed plans of correction during a three (3) year period; or

(l) The applicant has failed to comply with payment provisions in accordance with 922 KAR 2:190.

(5) A child-care center's license shall be revoked if:

(a) A representative of the center interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;

(b) A cabinet representative, a representative from another agency with regulatory authority, or parent is denied access during operating hours to:

1. A child;
2. The child-care center; or
3. Child-care center staff;

(c) The licensee is discontinued or disqualified from participation in:

1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or
2. A governmental assistance program as a result of fraud, abuse, or criminal conviction related to that program;

(d) The licensee fails to meet a condition of, or violates a requirement of a directed plan of correction pursuant to Section 16 of this administrative regulation;

(e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet;

(f) The licensee is the subject of more than two (2) directed plans of correction during a three (3) year period; or

(g) The licensee has failed to comply with payment provisions in accordance with 922 KAR 2:190.

(6) The cabinet or its designee shall suspend the license if:

(a) A regulatory violation is found to pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4); or

(b) The ~~child-care center~~^[child-care-center] fails to comply with the approved plan of correction.

Section 18. Civil Penalty. The cabinet shall assess and enforce a civil penalty in accordance with 922 KAR 2:190.

Section 19. Right of Appeal.

(1) If an application has been denied or a licensee receives notice of suspension, revocation, or civil penalty, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-DRCC-02, Licensed Provider Request for Appeal. The request shall:

- (a) Be submitted to the secretary of the cabinet or designee within twenty (20) calendar days of the notice of adverse action; and
- (b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-DRCC-02 for a hearing, the cabinet shall:

- (a) Appoint a hearing officer; and
- (b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

- (a) Abate the formal hearing pending completion of the informal dispute resolution process; and
- (b) Proceed to informal dispute resolution.

Section 20. Informal Dispute Resolution.

(1) A request for informal dispute resolution shall:

- (a) Accompany the request for a hearing;
- (b) Identify the licensure deficiency in dispute;
- (c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and
- (d) Include documentation that disputes the deficiency.

(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:

(a) Review documentation submitted by the applicant for licensure or licensee; and

(b) If requested, schedule an informal dispute resolution meeting with the applicant for licensure or licensee.

(3) The informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(4) The informal dispute resolution meeting shall be conducted by:

- (a) The regional program manager or designee; and
- (b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.

(5) Within ten (10) calendar days of completion of the informal dispute resolution meeting or request, the regional program manager or designee shall:

- (a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;
- (b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and
- (c) Specify whether the adverse action has been rescinded.

(6) An applicant or a licensee may:

- (a) Accept the determination; or
- (b) Proceed to a hearing according to KRS 13B.050.

(7) A request for informal dispute resolution shall not:

(a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or

(b) Delay submission of a written plan of correction.

(8) Emergency action taken in accordance with Section 17(2) of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

Section 21. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "OIG-DRCC-01, Initial Child-Care Center License Application", 8/2018;

(b) "OIG-DRCC-02, Licensed Provider Request for Appeal", 05/2024^[3/2020]; and

(c) "OIG-DRCC-06, Child-Care Center License Renewal Form", 8/2018.

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

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CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (As Amended at ARRS, November 13, 2024)

922 KAR 2:120. Child-care center health and safety standards.

RELATES TO: KRS Chapter 151, 158.030, Chapter 186, 189.125, 199.011(3), 199.894(1), 199.8951, 199.896(2), (18), (19), 199.8962, ~~[199.898,]~~211.350-211.380, Chapter 217, 311.646, 314.011(5), Chapter 318, 527.070(1), 620.030, ~~[7-C.F.R.-226.20,]~~16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, ~~98.41,~~ 49 C.F.R. 571.213~~]; 20 U.S.C.-6081-6084, 42 U.S.C.-9857-9858q]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.8962(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the ~~secretary~~^[Secretary] of the Cabinet for Health and Family Services to promulgate administrative regulations

necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. KRS 199.896(2) requires the Cabinet for Health and Family Services to promulgate administrative regulations to establish the requirements and procedures for the implementation of standards contained therein. This administrative regulation establishes health and safety standards for child-care centers.

Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).
- (2) "Corporal physical discipline" is defined by KRS 199.896(18).
- (3) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.
- (4) "Director" means an individual:
 - (a) Who meets the education and training requirements as specified in 922 KAR 2:090, Section 10;
 - (b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR 2:090, 922 KAR 2:280, and this administrative regulation; and
 - (c) Who is responsible for directing the program and managing the staff at the child-care center.
- (5) "Health professional" means a person currently licensed as a:
 - (a) Physician;
 - (b) Physician assistant;
 - (c) Advanced practice registered nurse; or
 - (d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.
- (6) "Infant" means a child who is less than twelve (12) months of age.
- (7) "Licensee" means the owner or operator of a child-care center to include:
 - (a) Sole proprietor;
 - (b) Corporation;
 - (c) Limited liability company;
 - (d) Partnership;
 - (e) Association; or
 - (f) Organization, such as:
 1. Board of education;
 2. Private school;
 3. Faith-based organization;
 4. Government agency; or
 5. Institution.
- (8) "Nontraditional hours" means the hours of:
 - (a) 7 p.m. through 5 a.m. Monday through Friday; or
 - (b) 7 p.m. on Friday until 5 a.m. on Monday.
- (9) "Parent" is defined by 45 C.F.R. 98.2.
- (10) "Premises" means the building and contiguous property in which child care is licensed.
- (11) "Preschool-age" means a child who is older than a toddler and younger than school-age.
- (12) "Protective surface" means loose surfacing material not installed over concrete, which includes:
 - (a) Wood mulch;
 - (b) Double shredded bark mulch;
 - (c) Uniform wood chips;
 - (d) Fine sand;
 - (e) Coarse sand;
 - (f) Pea gravel, except for areas used by children under three (3) years of age;
 - (g) Certified shock absorbing resilient material; or
 - (h) Other material approved by the cabinet or designee, based on recommendation from a nationally recognized source.
- (13) "Related" means having one (1) of the following relationships with the operator of the child-care center:
 - (a) Child;
 - (b) Grandchild;
 - (c) Niece;
 - (d) Nephew;
 - (e) Sibling;

- (f) Stepchild; or
- (g) Child in legal custody of the operator.

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

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

(16) "Transition" means the changing from one (1) child care arrangement to another.

(17) "Transition plan" means a document outlining the process to be used in moving a child from one (1) child care arrangement to another.

(18) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

- (a) Four (4) or more children in a nonresidential setting; or
- (b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.

(19) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Child Care Services.

(1) Services established in this administrative regulation shall be maintained during all hours of operation that child care is provided.

(2) For an operating child-care center, minimum staff-to-child ratios and group size shall be maintained as established in the table established in this subsection.

Age of Children	Ratio	Maximum Group Size*
Infant	1 staff for 5 children	10
Toddler 12 to 24 months	1 staff for 6 children	12
Toddler 24 to 36 months	1 staff for 10 children	20
Preschool-age 3 to 4 years	1 staff for 12 children	24
Preschool-age 4 to 5 years	1 staff for 14 children	28
School-age 5 to 7 years	1 staff for 15 children	30
School-age 7 and older	1 staff for 25 children (for before and after school)	30
	1 staff for 20 children (full day of care)	30
*Maximum Group Size shall be applicable only to Type I child-care centers.		

(a) In a Type I child-care center, a group size shall:

1. Be separately maintained in a defined area unique to the group; and
2. Have specific staff assigned to, and responsible for, the group.

(b) The age of the youngest child in the group shall determine the:

1. Staff-to-child ratio; and
2. Maximum group size.

(c) This subsection and subsection (10) of this section shall not apply during traditional school hours to a center:

1. Providing early childhood education to mixed-age groups of children whose ages range from thirty (30) months to six (6) years; and
2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.

(d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the center, the child shall be included in the staff-to-child ratio.

(e) A child-care center shall develop a written procedure to always maintain supervision, ratios, and group size including during:

1. The beginning of the day;
 2. Staff breaks; and
 3. Movement from the classroom to another location.
- (3)

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(a) Each center shall maintain a child-care program that ensures~~assures~~ each child shall be:

1. Provided with adequate supervision at all times by a qualified staff person who ensures the child is:

a. Within scope of vision and range of voice;~~[-or]~~
b. For a school-age child, within scope of vision or range of voice; and

c. Accounted for during movement from one (1) location to another using name-to-face recognition by visually identifying each child; and

2. Protected from abuse and neglect.

(b) The program shall include:

1. A procedure to ensure compliance with and inform child care staff of the laws of the commonwealth~~Commonwealth~~ pertaining to child abuse or neglect set forth in KRS 620.030; and

2. Written policy that states that the procedures that were taught at the orientation training shall be implemented by each child-care center staff member.

(4) The child-care center shall provide a daily planned program:

(a) Posted in writing in a conspicuous location with each age group and followed;

(b) Of activities that are individualized and developmentally appropriate for each child served;

(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) Unless the child-care center is a before- or after-school program that operates part day or less, that offers a variety of creative activities including:

1. Art or music;
2. Math or numbers;
3. Dramatic play;
4. Stories and books;
5. Science or nature;
6. Block building or stacking;
7. Tactile or sensory activity;
8. Multi-cultural exposure;
9. Indoor and outdoor play in which a child makes use of both small and large muscles;
10. A balance of active and quiet play, including group and individual activity;
11. An opportunity for a child to:

- a. Have some free choice of activities;
- b. If desired, play apart from the group at times; and
- c. Practice developmentally appropriate self-help procedures in respect to:

- (i) Clothing;
- (ii) Toileting;
- (iii) Hand-washing; and
- (iv) Eating; and

12. The use of screen time, electronic viewing, and listening devices if the:

- a. Material is developmentally appropriate to the child using the equipment;
- b. Material is not a replacement for active play or a substitute for engagement and interaction with other children and adults;
- c. Material does not include any violence, adult content viewing, or inappropriate language;
- d. Child is over twenty-four (24) months of age;
- e. Viewing or listening is discussed with parents beforehand; and

f. Viewing or listening is designed as an educational tool used to help children explore, create, problem solve, interact, and learn with and from one another.

(5) Screen time shall be:

(a) Utilized for:

1. A maximum of thirty (30) minutes per day in a half-day program;

2. A maximum of sixty (60) minutes per day in a full-day program; or

3. The time needed for school-age children to complete assigned non-traditional instruction; and

(b) Prohibited for a child under twenty-four (24) months of age.

(6) A child who does not wish to use an electronic device during the planned program shall be offered other appropriate activities.

(7) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.

(8) Sufficient time shall be allowed for an activity so that a child may progress at his or her own developmental rate.

(9) A child shall not be required to stand or sit for a prolonged period of time:

(a) During an activity;

(b) While waiting for an activity to start; or

(c) As discipline.

(10) If school-age care is provided:

(a) A separate area or room shall be provided in a Type I child-care center; and

(b) Each child shall be provided a snack after school.

(11) A child shall not be subjected to:

(a) Corporal physical discipline pursuant to KRS 199.896(18);

(b) Loud, profane, threatening, frightening, humiliating, or abusive language; or

(c) Discipline that is associated with:

1. Rest;
2. Toileting;
3. Play time; or
4. Food.

(12) If nontraditional hours of care are provided:

(a) Including time spent in school, a child shall not be permitted to spend more than sixteen (16) hours in the child-care center during one (1) twenty-four (24) hour period;

(b) At least one (1) staff member shall be assigned responsibility for each sleeping room;

(c) A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity that is developmentally appropriate for the child;

(d) A child sleeping three (3) hours or more shall sleep in:

1. Pajamas; or
2. A nightgown;

(e) A child who attends school from the child-care center shall be offered breakfast prior to leaving for school; and

(f) Staff shall:

1. If employed by a Type I child-care center, remain awake while on duty; or

2. If employed by or is the operator of a Type II child-care center, remain awake until every child in care is asleep.

(13)

(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

(14) A child-care center shall ensure all staff members take~~ensure~~ precautions~~are taken~~ to prevent shaken baby syndrome, abusive head trauma, and child maltreatment.

Section 3. General Requirements.

(1) Screen time, electronic viewing, and listening devices shall only be used in the center as a part of the child's planned program of activity as established in Section 2(4) and (5) of this administrative regulation.

(2) Activity areas, equipment, and materials shall be arranged so that the child's activity is adequately supervised by staff.

(3) Computer equipment shall be equipped with a monitoring device that limits access by a child to items inappropriate for a child to view or hear.

(4) A child shall:

(a) Be helped with personal care and cleanliness based upon his or her developmental skills;

(b) Except as established in paragraph (c) of this subsection, wash his or her hands with liquid soap and warm running water:

1.
 - a. Upon arrival at the center; or
 - b. Within thirty (30) minutes of arrival for school-age children;
2. Before and after eating or handling food;
3. After toileting or diaper change;
4. After handling animals;

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5. After touching an item or an area of the body soiled with body fluids or wastes; and

6. After outdoor or indoor play time; and

(c) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (b) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.

(5) Staff shall:

(a) Maintain personal cleanliness;

(b) Conform to hygienic practices while on duty;

(c) Except as established in paragraph (d) of this subsection, wash their hands with liquid soap and running water:

1. Upon arrival at the center;

2. After toileting or assisting a child in toileting;

3. Before and after diapering each child;

4. After wiping or blowing a child's or own nose;

5. After handling animals;

6. After caring for a sick child;

7. Before and after feeding a child or eating;

8. Before dispensing medication;

9. After smoking or vaping; and

10. If possible, before administering first aid; and

(d) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (c) of this subsection. The staff shall wash the staff's hands as soon as practicable once liquid soap and warm running water are available.

(6) A staff person suspected of being infected with a communicable disease shall:

(a) Not perform duties that may[could] allow for the transmission of the disease until the infectious condition can no longer be transmitted; and

(b) Provide a statement of fitness to return to work from a health professional, if requested.

(7) The following shall be inaccessible to a child in care:

(a) Toxic cleaning supplies, poisons, and insecticides;

(b) Matches, cigarettes, lighters, and flammable liquids; and

(c) Personal belongings and medications of staff.

(8) The following shall be inaccessible to a child in care unless under direct supervision and part of planned program of instruction:

(a) Knives and sharp objects;

(b) Litter and rubbish;

(c) Bar soap; and

(d) Plastic bags not used for personal belongings.

(9) In accordance with KRS 527.070(1), firearms and ammunition shall be stored separately from each other in a locked area outside of the designated child care area.

(10) Smoking or vaping shall:

(a) Be permitted in accordance with local ordinances;

(b) Be allowed only in outside designated areas; and

(c) Not be permitted in the presence of a child.

(11) While bottle feeding a child, the:

(a) Child shall be held; and

(b) Bottle or beverage container shall not be:

1. Propped;

2. Left in the mouth of a sleeping child; or

3. Heated in a microwave.

(12) A fire drill shall be:

(a) Conducted during hours of operation at least monthly; and

(b) Documented, detailing the date and time.

(13) An earthquake drill, shelter-in-place drill, [or] lockdown drill, and tornado drill shall be:

(a) Conducted during hours of operation at least quarterly; and

(b) Documented, detailing the date and time.

(14) A written plan shall be in place to communicate reunification with families and accommodations in the event of a natural disaster, fire, shelter-in-place, lockdown, or other emergency for:

(a) Infants and toddlers;

(b) Children with disabilities; and

(c) Children with chronic medical conditions.

Section 4. Premises Requirements.

(1) The premises shall be:

(a) Suitable for the purpose intended;

(b) Kept clean and in good repair; and

(c) Equipped with:

1. A working telephone accessible to a room used by a child; and

2. A list of emergency numbers posted by the telephone or maintained in the telephone's contact, including numbers for the:

a. Police department;

b. Fire department;

c. Emergency medical care and rescue squad; and

d. Poison control center.

(2) A child-care center shall be in compliance with the codes administered by the Kentucky Fire Marshal and the local zoning laws.

(3) Fire and emergency exits shall be kept clear of debris.

(4) A working carbon monoxide detector shall be required in a licensed child-care center that is in a home if the home:

(a) Uses fuel burning appliances; or

(b) Has an attached garage.

(5) The building shall be constructed to ensure the:

(a) Building is:

1. Dry;

2. Ventilated; and

3. Well lit, including clean light fixtures that are:

a. In good repair in all areas; and

b. Shielded or have shatter-proof bulbs installed; and

(b) Following are protected:

1. Windows;

2. Doors;

3. Stoves;

4. Heaters;

5. Furnaces;

6. Pipes; and

7. Stairs.

(6)

(a) A minimum of thirty-five (35) square feet of indoor space is required per child, exclusive of the:

1. Kitchen;

2. Bathroom;

3. Hallways; and

4. Storage areas; and

(b) The final total capacity of the center shall be calculated and approved by the cabinet[Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child].

(7) Measures shall be utilized to control the presence of:

(a) Rodents;

(b) Flies;

(c) Roaches; and

(d) Other vermin.

(8) An opening to the outside shall be effectively protected against the entrance of vermin by:

(a) Self-closing doors;

(b) Closed windows;

(c) Screening;

(d) Controlled air current; or

(e) Other effective means.

(9) Floors, walls, and ceilings shall be smooth, in good repair, and constructed to be easily cleaned.

(10) The water supply shall be:

(a) Potable;

(b) Protected from contamination;

(c) Adequate in quality and volume;

(d) Under sufficient pressure to permit unrestricted use; and

(e) Obtained from an approved public water supply or a source approved by the local health department.

(11) Groundwater supplies for a child-care center caring for:

(a) More than twenty-five (25) children shall comply with requirements of the Energy and Environment Cabinet, Division of Water, established in KRS Chapter 151 and 401 KAR Chapter 8, as applicable; or

(b) Twenty-five (25) children or less shall secure approval from the:

1. Energy and Environment Cabinet; or

2. Local health department.

(12) Sewage shall be properly disposed by a method approved by the:

- (a) Energy and Environment Cabinet; or
- (b) Cabinet.

(13) All plumbing shall comply with the State Plumbing Code established in KRS Chapter 318.

(14) Solid waste shall be kept in a suitable receptacle in accordance with local, county, and state law, as governed by KRS 211.350 to 211.380.

(15) If a portion of the building is used for a purpose other than child care:

(a) Necessary provisions shall be made to avoid interference with the child-care program; and

(b) A separate restroom shall be provided for use only by those using the building for its child care purpose.

(16) The temperature of the indoor area of the premises shall be sixty-five (65) to eighty-two (82) degrees Fahrenheit.

(17) Outdoor activity shall be restricted based upon:

- (a) Temperature;
- (b) Weather conditions;

(c) Weather alerts, advisories, and warnings issued by the National Weather Service; or

(d) Age or temperament of the child.

(18) A kitchen shall not be required if:

(a) The only food served is an afternoon snack to school-age children; and

(b) Adequate refrigeration is maintained.

(19) The Department of Housing, Buildings and Construction, the Kentucky Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.

(20) An outdoor play area shall have constant and active supervision and shall be:

(a) Except for an after-school child-care program, located on the premises of a public or state-accredited nonpublic school, fenced for the safety of the children;

(b) A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;

(c) Free from:

- 1. Litter;
- 2. Glass;
- 3. Rubbish; and
- 4. Flammable materials;
- (d) Safe from foreseeable hazard;
- (e) Well drained;
- (f) Well maintained;
- (g) In good repair; ~~and~~
- (h) Visible to staff at all times; and

(i) Protected by physical or natural barriers from:

- 1. Traffic;
- 2. Gullies; and
- 3. Other hazards.

(21) A protective surface shall:

- (a) Be provided for outdoor play equipment used to:
 - 1. Climb;
 - 2. Swing; and
 - 3. Slide; and
- (b) Have a fall zone equal to the height of the equipment.

(22) If a child-care center does not have access to an outdoor play area, an indoor space shall:

- (a) Be used as a play area;
- (b) Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;
- (c) Include equipment for gross motor skills; and
- (d) Have a protective surface of at least two (2) inches thick around equipment intended for climbing.

(23) While attending, a child shall:

- (a) Have moderate to vigorous activity each day, including active play that:
 - 1. Includes outdoor play unless unavailable pursuant to subsections (17) or (22) of this section;

2. Shall occur for a minimum of;

- a. Thirty (30) minutes per day in a half-day program; or
- b. Sixty (60) minutes per day in a full-day program; and

3. May be broken into smaller increments of time throughout a day; and

(b) Not be punished or rewarded in regards to play time.

(24) Fences shall be:

- (a) Constructed of safe material;
- (b) Stable; and
- (c) In good condition.

(25) Supports for climbing apparatus and large equipment shall be securely fastened to the ground.

(26) Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.

(27) A sandbox shall be:

- (a) Constructed to allow for drainage;
- (b) Covered while not in use;
- (c) Kept clean; and
- (d) Checked for vermin prior to use.

(28)

(a) Pursuant to 45 C.F.R. 98.41, constant and active supervision shall be maintained around any body of water.

(b) The body of water~~and~~ shall be:

1. Inaccessible by secured physical or natural barriers of adequate height; and

2. Appropriately secured.

(29) Bodies of water that shall not be utilized include:

- (a) Portable wading pools;
- (b) Natural bodies of water; and
- (c) Unfiltered, nondisinfected containers.

~~(30)~~[(29)] A child-care center shall have enough toys, play apparatus, and developmentally appropriate materials to provide each child with a variety of activities during the day, as specified in Section 2 of this administrative regulation.

~~(31)~~[(30)] Storage space shall be provided:

(a) In the form of:

- 1. Shelves; or
- 2. Other storage device accessible to the children; and
- (b) In sufficient quantity for each child's personal belongings.

~~(32)~~[(31)] Supplies shall be stored so that the adult can reach them without leaving a child unattended.

Section 5. Infant and Toddler Play Requirements.

(1) Indoor areas for infants and toddlers under twenty-four (24) months of age shall:

- (a) Be separate from an area used by an older child;
- (b) Not be an exit or entrance; and
- (c) Have adequate crawling space for an infant or toddler away from general traffic patterns of the center.

(2) While awake, an infant shall have short periods of supervised tummy time throughout each day.

(3) Except in accordance with subsection (4) of this section or Section 2(2)(c) of this administrative regulation, an infant or toddler under twenty-four (24) months of age shall not participate in an activity with an older child for more than one (1) hour per day.

(4) If a toddler is developmentally appropriate for a transition to a preschool age group, a toddler may participate in an activity with an older child for more than one (1) hour per day if:

- (a) Space for the toddler is available in the preschool-age group;
- (b) The staff-to-child ratios and group sizes are maintained based on the age of the youngest child;
- (c) The center has a procedure for listing a transitioning toddler on attendance records, including a specific day and time the toddler is with either age group; and
- (d) The child-care~~[child-care]~~ center has obtained the signature and approval of the toddler's parent on the toddler's transition plan.

(5) If a child-care center provides an outdoor play area for an infant or toddler under twenty-four (24) months of age, the outdoor area shall be:

- (a) Shaded; and
- (b) In a separate area or scheduled at a different time than an older child.

(6) Playpens and play yards shall:

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- (a) Meet federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;
- (b) Be manufactured for commercial use; and
- (c) Not be used for sleeping or napping.

Section 6. Sleeping and Napping Requirements.

(1) An infant shall sleep or nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(2) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(3) Rest time shall occur in an adequate space according to the child's age as follows:

(a) For an infant:

- 1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;
- 2. A firm crib mattress in good repair with a clean tight-fitted sheet that shall be changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet;
- 3. No bedding other than a clean tight-fitted sheet; and
- 4. No toys or other items except the infant's pacifier; or

(b) For a toddler or preschool-age child:

- 1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and

2. Bedding that is in good repair and is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet.

(4) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending the child-care center during nontraditional hours.

(5) A child who does not sleep shall be permitted to play quietly and shall be visually supervised.

(6) Cots, equipment, and furnishings used for sleeping and napping shall be spaced twelve (12) inches apart to allow free and safe movement by a person.

(7) If cots or mats are used, floors shall be free from:

- (a) Drafts;
- (b) Liquid substances;
- (c) Dirt; and
- (d) Dampness.

(8)

(a) Cots or mats not labeled for individual use by a child shall be cleaned after each use.

(b) Cots or mats labeled for individual use by a child shall be:

- 1. Cleaned at least weekly; and
- 2. Disinfected immediately if it is soiled or wet.

(9) Individual bedding shall be stored in a sanitary manner.

Section 7. First Aid and Medicine.

(1) First aid supplies shall:

- (a) Be available to provide prompt and proper first aid treatment;
- (b) Be stored out of reach of a child;
- (c) Be periodically inventoried to ensure the supplies have not expired;

(d) If reusable, be:

- 1. Sanitized; and
- 2. Maintained in a sanitary manner; and

(e) Include:

- 1. Liquid soap;
- 2. Adhesive bandages;
- 3. Sterile gauze;
- 4. Medical tape;
- 5. Scissors;
- 6. A thermometer;
- 7. Flashlight;
- 8. Cold pack;
- 9. First aid book;
- 10. Disposable gloves; and
- 11. A cardiopulmonary resuscitation mouthpiece protector.

(2) A child showing signs of an illness or condition that ~~may could~~ be communicable shall not be admitted to the regular child-care program.

(3) If a child becomes ill while at the child-care center:

(a) The child shall be placed in a supervised area isolated from the rest of the children;

(b) The parent shall be contacted immediately; ~~and~~

(c) Arrangements shall be made to remove the child from the child-care center as soon as practicable;

(d) Biological contaminants, such as bodily fluids, blood, or excretions, shall be handled with disposable gloves as required by 45 C.F.R. 98.41;

(e) Contaminated clothing or other absorbent materials shall be placed in a sealed plastic container or bag labeled with the child's name and returned to the parent; and

(f) Soiled surfaces shall be cleaned and disinfected.

(4) Prescription and nonprescription medication shall be administered to a child in care:

(a)

1. With a written request of the child's parent or the child's prescribing health professional; and

2. According to the directions or instructions on the medication's label; or

(b) For epinephrine, in accordance with KRS 199.8951 and 311.646.

(5) The child-care center shall keep a written record of the administration of medication, including:

(a) Time of each dosage;

(b) Date;

(c) Amount;

(d) Name of staff person giving the medication;

(e) Name of the child; and

(f) Name of the medication.

(6) Medication, including refrigerated medication, shall be:

(a) Stored in a separate and locked place, out of the reach of a child unless the medication is:

1. A first aid supply and is maintained in accordance with subsection (1) of this section;

2. Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be inaccessible to a child;

3. An epinephrine auto-injector. A licensed child-care center shall comply with KRS 199.8951 and 311.646, including:

a. An epinephrine auto-injector shall be inaccessible to a child;

b. A child-care center shall have at least one (1) person onsite who has received training on the administration of an epinephrine auto-injector if the child-care center maintains an epinephrine auto-injector;

c. A child-care center shall seek emergency medical care for a child if an auto-injector is administered to the child; and

d. A child-care center shall report to the child's parent and the cabinet in accordance with 922 KAR 2:090, Section 13(1)(b), if an epinephrine auto-injector is administered to a child; or

4. An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care;

(b) Kept in the original bottle; and

(c) Properly labeled.

(7) Medication shall not be given to a child if the medication's expiration date has passed.

(8) Each center shall ensure that every staff member has received training on first aid and cardiopulmonary resuscitation (CPR).

(9) Pursuant to 45 C.F.R. 98.41, waste and biological contaminants, such as bodily fluids, blood, or excretions, shall be:

(a) Disposed of in a manner that prevents exposure to children;

(b) Inaccessible to children; and

(c) In a covered plastic-lined receptacle with a close-fitting lid.

(10) The child-care center shall ensure each child's food or other allergies and allergy care plan are posted prominently where food is served with the permission of the parent or guardian, including:

(a) Instructions regarding the allergy, including identifying symptoms;

(b) Steps taken to avoid and prevent the allergen; and

(c) A plan of treatment in the event of an allergic reaction, including medication and doses, and that all epinephrine pens shall be administered in accordance with subsection (6)(a)3. of this section.

Section 8. Kitchen Requirements.

- (1) The kitchen shall:
 - (a) Be clean;
 - (b) Be equipped for proper food:
 1. Preservation;
 2. Storage;
 3. Preparation; and
 4. Service;
 - (c) Be adequately ventilated[~~to the outside air~~]; and
 - (d) Except in a Type II child-care center ~~if~~**when** a meal is not being prepared, not be used for the activity of a child.
- (2) A child-care center required to have a food service permit shall be in compliance with 902 KAR 45:005 and this administrative regulation.
- (3) Convenient and suitable sanitized utensils shall be:
 - (a) Provided; and
 - (b) Used to minimize handling of food during preparation.
- (4) A cold-storage facility used for storage of perishable food in a nonfrozen state shall:
 - (a) Have an indicating thermometer or other appropriate temperature measuring device;
 - (b) Be in a safe environment for preservation; and
 - (c) Be forty (40) degrees Fahrenheit or below.
- (5) Frozen food shall be:
 - (a) Kept at a temperature of zero degrees Fahrenheit or below; and
 - (b) Thawed:
 1. At refrigerator temperatures;
 2. Under cool, potable running water;
 3. As part of the cooking process; or
 4. By another method in accordance with the Department for Public Health's food safety standards and permits, established in KRS Chapter 217.
- (6) Equipment, utensils, and surfaces contacting food shall be:
 - (a) Smooth;
 - (b) Free of breaks, open seams, cracks, and chips;
 - (c) Accessible for cleaning; and
 - (d) Nontoxic.
- (7) The following shall be clean and sanitary:
 - (a) Eating and drinking utensils;
 - (b) Kitchenware;
 - (c) Food contact surfaces of equipment;
 - (d) Food storage utensils;
 - (e) Food storage containers;
 - (f) Cooking surfaces of equipment; and
 - (g) Nonfood contact surfaces of equipment.
- (8) A single-service item shall be:
 - (a) Stored;
 - (b) Handled and dispensed in a sanitary manner; and
 - (c) Used only once.
- (9) Bottles shall be:
 - (a) Individually labeled;
 - (b) Promptly refrigerated;
 - (c) Covered while not in use; and
 - (d) Consumed within one (1) hour of being heated or removed from the refrigerator.

Section 9. Food and Drink Requirements for All Child-Care Centers.

- (1) Food shall be:
 - (a) Clean;
 - (b) Free from:
 1. Spoilage;
 2. Adulteration; and
 3. Misbranding;
 - (c) Safe for human consumption;
 - (d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;
 - (e) Obtained from a source that is in compliance with the Department for Public Health's food safety standards and permits, established in KRS Chapter 217;
 - (f) Acceptable if from an established commercial food store;

(g) Served in a quantity that is developmentally appropriate for the child with additional portions provided upon request of the child; and

- (h) Protected against contamination from:
 1. Dust;
 2. Flies;
 3. Rodents and other vermin;
 4. Unclean utensils and work surfaces;
 5. Unnecessary handling;
 6. Coughs and sneezes;
 7. Cuts in skin;
 8. Communicable disease;
 9. Flooding;
 10. Drainage; and
 11. Overhead leakage.
- (2) Food shall not be:
 - (a) Used for reward;
 - (b) Used for discipline;
 - (c) Withheld until all other foods are consumed; or
 - (d) Served while viewing electronic devices.
- (3) A serving of milk shall consist of:
 - (a) Breast milk or iron-fortified formula for a child:
 1. Age birth to twelve (12) months; or
 2. Beyond twelve (12) months of age as documented by the parent or the child's physician;
 - (b) Pasteurized unflavored whole milk for children ages twelve (12) months to twenty-four (24) months; or
 - (c) Pasteurized unflavored low fat one (1) percent or fat-free skim milk for children ages twenty-four (24) months to school-age.
 - (4) Formula or breast milk provided by the parent shall be prepared and labeled.
 - (5) A child-care center may participate in the Child and Adult Care Food Program (CACFP).
 - (6) A serving of bread shall only consist of whole or enriched grain.
 - (7) Drinking water shall be freely available to a child throughout the day.
 - (8) Food shall be stored on:
 - (a) Clean racks;
 - (b) Clean shelves;
 - (c) Other clean surfaces; or
 - (d) If maintained in a sanitary condition, in nonabsorbent labeled containers a minimum of six (6) inches off the floor.
 - (9) Fruits and vegetables shall be washed before cooking or serving.
 - (10) Children shall not be served food that has been deep-fried on-site.
 - (11) Meat salads, poultry salads, and cream-filled pastries shall be:
 - (a) Prepared with utensils that are clean; and
 - (b) Refrigerated unless served immediately.
 - (12) An individual portion of food served to a child or adult shall not be served again.
 - (13) Wrapped food that is still wholesome and has not been unwrapped may be reserved.
 - (14) Meals shall be:
 - (a) Served every two (2) to three (3) hours; and
 - (b) Served to a child:
 1. Seated with sufficient room to manage food and tableware; and
 2. Supplied with individual eating utensils designed for use by a child.
 - (15) Drinks served to children shall not have added sugar. Children shall drink water, milk, or 100% juice with meals.
 - (16) Juice shall:
 - (a) Not include added sugar;
 - (b) Not be served more than once per day;
 - (c) Not be served to children under the age of twelve (12) months; and
 - (d) Serve as a fruit or vegetable meal component replacement.
 - (17) A meat alternative shall include:
 - (a) Tofu;
 - (b) Soy products;
 - (c) Cheese, including cottage or ricotta cheese;

- (d) Eggs;
- (e) Cooked dry beans;
- (f) Peanut butter or soy nut butter;
- (g) Yogurt, plain or flavored; or
- (h) Peanuts, soy nuts, tree nuts, or seeds.

(18) Cheese shall be natural and pasteurized processed cheese. Children shall not be served cheese product, imitation cheese, cheese food, or cheese spread as a meat alternative.

(19) For food provided by the center, all children in the center shall be offered the same food items unless:

- (a) A parent provides written authorization to substitute the food with an alternative that meets the same component requirement; or
- (b) A physician provides written authorization to substitute the food or the food component and includes the food that the child shall not have and the food substitution that the child shall have.

(20) Children shall be served all daily food components required by Section 10 or 11 of this administrative regulation.

Section 10. Meal Planning Requirements for a Center that Provides Meals.

(1) Breakfast shall include the following three (3) components:

- (a) Milk;
- (b) Bread or grain, which may:
 1. Be exchanged for a meat or meat alternative up to three (3) times per week; and
 2. Include ready-to-eat cereal with six (6) grams of sugar or less per dry ounce; and

- (c)
 1. Fruit;
 2. Vegetable; or
 3. 100 percent juice.

(2) A snack shall include two (2) of the following components:

- (a) Milk;
- (b) Meat or meat alternative;
- (c) Bread or grain; or
- (d)
 1. Fruit;
 2. Vegetable; or
 3. 100 percent juice.

(3) Lunch, and dinner if served, shall include the following components:

- (a) Milk;
- (b) Meat or meat alternative;
- (c) Bread or grain; and
- (d)
 1. Two (2) different vegetables; or
 2. One (1) fruit and one (1) vegetable.

(4) A grain-based dessert shall not replace the bread or grain component of a meal.

(5) Yogurt served to children shall have twenty-three (23) grams of sugar or less per six (6) ounces.

(6) The serving size for milk shall be:

- (a) Four (4) ounces for one (1) or two (2) year old children;
- (b) Six (6) ounces for three (3) to five (5) year old children; or
- (c) Eight (8) ounces for school-age children.

(7) At least one (1) whole grain bread or grain shall be served daily.

(8) A component shall be considered "whole grain" if:

(a) The product is listed by any state agency's Special Supplemental Nutrition Program for Women, Infants, and Children as whole grain;

(b) The product is labeled as "whole wheat" and has a Standard of Identity issued by the U.S. Food and Drug Administration (FDA);

(c) The product includes one (1) of the FDA-approved whole grain health claims on its packaging, exactly as written;

(d) The product meets the whole grain-rich criteria under the National School Lunch Program (NSLP);

(e) The product is identified on the package as "whole grain," "whole wheat," or "whole grain-rich"; or

(f) Proper documentation from a manufacturer or standardized recipe demonstrates that whole grains are the primary grain ingredient by weight.

(9) A weekly menu shall be:

- (a) Prepared;

- (b) Dated;
- (c) Posted in advance in a conspicuous place;
- (d) Kept on file for thirty (30) days; and
- (e) Amended in writing with any substitutions on the day the meal is served.

Section 11. Meal Planning Requirements for a Center that Does Not Provide Meals.

(1) A child-care center that does not provide meals shall serve:

- (a)
 1. Breakfast; or
 2. A mid-morning snack;
- (b)
 1. Lunch; or
 2. A mid-afternoon snack; and
- (c) Dinner, if appropriate.

(2) Breakfast shall include three (3) of the following components:

- (a) Milk;
- (b) Bread or grain;
- (c) Meat or meat alternative; or
- (d)
 1. Fruit;
 2. Vegetable; or
 3. 100 percent juice.

(3) A snack shall include two (2) of the following components:

- (a) Milk;
- (b) Bread or grain;
- (c) Meat or meat alternative; or
- (d)
 1. Fruit;
 2. Vegetable; or
 3. 100 percent juice.
- (4) Lunch, and dinner if served, shall include:
 - (a) Milk;
 - (b) Bread or grain;
 - (c) Meat or meat alternative; and
 - (d)
 1. Two (2) different vegetables; or
 2. One (1) fruit and one (1) vegetable.

Section 12. Toilet, Diapering, and Toiletry Requirements.

(1) A child-care center, per building, shall have a minimum of one (1) toilet and one (1) lavatory for each twenty (20) children. Urinals may be substituted for up to one-half (1/2) of the number of toilets required for a male toilet room.

(2) A toilet room shall:

- (a)
 1. Be provided for each gender; or
 2. A plan shall be implemented to use the same toilet room at separate times;
- (b) Have a supply of toilet paper; and
- (c) Be cleaned and disinfected daily.
- (3) A sink shall be:
 - (a) Located in or immediately adjacent to toilet rooms;
 - (b) Equipped with hot and cold running water that allows for hand washing;
 - (c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;
 - (d) Equipped with liquid soap;
 - (e) Equipped with hand-drying blower or single use disposable hand drying material;
 - (f) Equipped with an easily cleanable waste receptacle; and
 - (g) Immediately adjacent to a changing area used for infants and toddlers.

(4) Each toilet shall:

- (a) Be kept in clean condition;
- (b) Be kept in good repair;
- (c) Be in a lighted room; and
- (d) Have ventilation to outside air.
- (5) Toilet training shall be coordinated with the child's parent.
- (6) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.
- (7) If a toilet training chair is used, the chair shall be:
 - (a) Used over a surface that is impervious to moisture;

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- (b) Out of reach of other toilets or toilet training chairs;
- (c) Emptied promptly; and
- (d) Disinfected after each use.
- (8) Diapers or clothing shall be:
 - (a) Changed if/when soiled or wet;
 - (b) Stored in a covered container temporarily; and
 - (c) Washed or disposed of at least once a day.
- (9) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.
- (10) If/When a child is diapered, the child shall:
 - (a) Not be left unattended; and
 - (b) Be placed on a surface that is:
 - 1. Clean;
 - 2. Padded;
 - 3. Free of holes, rips, tears, or other damage;
 - 4. Nonabsorbent;
 - 5. Easily cleaned; and
 - 6. Free of any items not used for diaper changing.
- (11) Unless the child is allergic, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.
- (12) Staff shall disinfect the diapering surface after each child is diapered.
- (13) If staff wears disposable gloves, the gloves shall be changed and disposed after each child is diapered.
- (14) Combs, towels or washcloths, brushes, and toothbrushes used by a child shall be:
 - (a) Individually stored in separate containers; and
 - (b) Plainly labeled with the child's name.
- (15) Toothbrushes shall be:
 - (a) Individually identified;
 - (b) Allowed to air dry; and
 - (c) Protected from contamination.
- (16) Toothpaste used by multiple children shall be dispensed onto an intermediate surface, such as waxed paper, to avoid cross contamination.

Section 13. Toys and Furnishings.

- (1) All toys and furniture contacted by a child shall be:
 - (a) Kept clean and in good repair; and
 - (b) Free of peeling, flaking, or chalking paint.
- (2) Indoor and outdoor equipment shall:
 - (a) Be clean, safe, and in good repair;
 - (b) Meet the physical, developmental needs, and interests of children of different age groups;
 - (c) Be free from sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, lead-based paint, poisonous material, and flaking or chalking paint; and
 - (d) Be designed to guard against entrapment or situations that may cause strangulation.
- (3) Toys shall be:
 - (a) Used according to the manufacturer's safety specifications;
 - (b) Durable; and
 - (c) Without sharp points or edges.
- (4) A toy or another item that is considered a mouth contact surface by a child not toilet trained shall be sanitized daily by:
 - (a)
 - 1. Scrubbing in warm, soapy water using a brush to reach into crevices;
 - 2. Rinsing in clean water;
 - 3. Submerging in a sanitizing solution for at least two (2) minutes; and
 - 4. Air dried; or
 - (b) Cleaning in a dishwasher if the toy or other item is dishwasher safe.
- (5) Tables and chairs shall be of suitable size for children.
- (6) Chairs appropriate for staff shall be provided to use while feeding, holding, or playing with a child.

Section 14. Transportation.

- (1) A center shall document compliance with KRS Chapter 186 and 603 KAR 5:072 pertaining to:
 - (a) Vehicles;
 - (b) Drivers; and

- (c) Insurance.
- (2) A center providing or arranging transportation service shall:
 - (a) Be licensed and approved by the cabinet or its designee prior to transporting a child;
 - (b) Have a written plan that details the type of transportation, staff schedule, transportation schedule, and transportation route; and
 - (c) Have written policies and procedures, including emergency procedures practiced monthly by staff who transports children.
- (3) Prior to transporting a child, a center providing transportation services of a child shall notify the cabinet or its designee in writing of the:
 - (a) Type of transportation offered;
 - (b) Type of vehicle used for transportation;
 - (c) Plan for ensuring staff perform duties relating to transportation properly;
 - (d) Full insurance coverage for each vehicle;
 - (e) Agency policy and procedures relating to an emergency plan for evacuating the vehicle as required by 45 C.F.R. 98.41;
 - (f) Contracts, agreements, or documents detailing arrangements with any third party for services; and
 - (g) Safety procedures for:
 - 1. Transporting a child;
 - 2. Loading and unloading a child; and
 - 3. Providing adequate supervision of a child.
- (4) A vehicle used to transport children shall be equipped with:
 - (a) A fire extinguisher;
 - (b) First aid supplies as established in Section 7 of this administrative regulation;
 - (c) Emergency reflective triangles; and
 - (d) A device to cut the restraint system, if necessary.
- (5) Transportation provided by licensed public transportation or a school bus shall comply with subsections (1) and (2) of this section.
- (6) A vehicle used to transport children shall comply with the requirements established in paragraphs (a) through (d) of this subsection.
 - (a) For a twelve (12) or more passenger vehicle, the child-care center shall maintain a current certification of inspection from the Transportation Cabinet.
 - (b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:
 - 1. Signal lamps;
 - 2. Identifying colors; and
 - 3. Cautionary words.
 - (c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.
 - (d) A vehicle shall not transport children and hazardous materials at the same time.
- (7) The appropriate car safety seat meeting federal and state motor vehicle safety standards in 49 C.F.R. 571.213 and KRS 189.125 shall be used for each child.
- (8) A daily inspection of the vehicle shall be performed prior to the vehicle's use and documented for:
 - (a) Tire inflation consistent with tire manufacturer's recommended air pressure;
 - (b) Working lights, signals, mirrors, gauges, and wiper blades;
 - (c) Working safety restraints;
 - (d) Adequate fuel level; and
 - (e) Cleanliness and good repair.
- (9)
 - (a) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.
 - (b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).
- (10) Each child shall:
 - (a) Have a seat;
 - (b) Be individually belted or harnessed in the seat; and
 - (c) Remain seated while the vehicle is in motion.
- (11) A child shall not be left unattended:
 - (a) At the site of aftercare delivery; or
 - (b) In a vehicle.

(12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child may[can] be picked up.

(13) A child shall not be picked up or delivered to a location that requires crossing the street or highway unless accompanied by an adult.

(14) A vehicle transporting a child shall have the headlamps on.

(15) If a vehicle needs to be refueled, it shall be refueled only while not being used to transport a child. If emergency refueling or repair is necessary during transporting, all children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(16) If the driver is not in the driver's seat, the:

- (a) Engine shall be turned off;
- (b) Keys shall be removed; and
- (c) Emergency brake shall be set.

(17) Transportation services provided shall:

(a) Be recorded in writing and include:

- 1. The first and last name of the child transported; and
- 2. The time each child gets on and the time each child gets off;
- (b) Be completed by a staff member other than the driver; and
- (c) Be kept for five (5) years.

(18) A driver of a vehicle transporting a child for a center shall:

- (a) Be at least twenty-one (21) years old;
- (b) Complete:
 - 1. The background checks as described in 922 KAR 2:280; and
 - 2. An annual check of the:

a. Kentucky driver history records in accordance with KRS 186.018; or

b. Driver history records through the state transportation agency that issued the driver's license;

(c) Hold a current driver's license that has not been suspended or revoked during the last five (5) years; and

(d) Not caused an accident that resulted in the death of a person.

(19) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(20)

(a) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall revoke a center's privilege to transport a child or pursue an adverse action in accordance with Section 15, 16, 17, or 18 of 922 KAR 2:090:

1. For a violation of this section; or

2. If the center:

a. Fails to report an accident in accordance with 922 KAR 2:090, Section 13; or

b. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

(b) Revocation of a center's privilege to provide transportation services in accordance with paragraph (a) of this subsection shall:

- 1. Apply to each site listed under the licensee; and
- 2. Remain effective for no less than a twelve (12) month period.

(21) A parent may use the parent's vehicle to transport the parent's child during a field trip.

Section 15. Animals.

(1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

- 1. The animal is under the supervision and control of an adult;
- 2. Written parental consent has been obtained; and
- 3. The animal is certified as vaccinated against rabies; or

(b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a child-care center unless the animal is:

(a) A part of a planned program activity led by an animal specialist affiliated with a zoo or nature conservatory; and

(b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

(4) This section shall not apply to wild animals on the outer property of the child-care center that are expected to be found outdoors, such as squirrels and birds, if they are not:

- (a) Disturbed; or
- (b) Brought indoors.

FILED WITH LRC: November 13, 2024

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
Board of Dentistry
(Amended After Comments)

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; and

(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: November 13, 2024

FILED WITH LRC: November 13, 2024 at 1:25 p.m.

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:

(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.

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:

(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.

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

902 KAR 10:120. Kentucky public swimming and bathing facility operations[facilities].

RELATES TO: KRS Chapter 13B, 211.015, 211.205, [211.090, 211.210, 211.220,] 211.990(2), **15 U.S.C. 8003**[-322.110, 323.020, 29 C.F.R. 1910.119, 15 U.S.C.-8003]

STATUTORY AUTHORITY: KRS 194A.050[4], 211.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet[. KRS 194A.050(2) authorizes the secretary to promulgate regulations to establish a fee schedule for permitting and annual inspection of efforts regarding compliance with program standards administered by the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities and their operation and maintenance in a safe and sanitary manner to protect

public health and prevent health hazards. This administrative regulation establishes uniform standards for public swimming pools and bathing facilities.

Section 1. Definitions.

(1) ["Accessible" means having access to a fixture, connection, appliance or equipment, even if it is necessary to remove an access panel, door, or similar obstruction.]

[(2)] ["Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.]

[(3)] ["Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other device, and the flood level rim of the receptacle.]

[(4)] "Alkalinity" or "total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (ppm).

[(2)][(5)] "Approved" means that which is acceptable to the cabinet.

[(3)][(6)] "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

[(4)][(7)] ["Backwash cycle" means the time required to backwash the filter system thoroughly.]

[(8)] ["Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.]

[(9)] "Bather" means a person using a public swimming and bathing facility.

[(5)][(10)] "Cabinet" is defined by KRS 211.015(1)(a).

[(6)][(11)] ["Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.]

[(12)] "Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that will need to be periodically replaced.

[(7)][(13)] "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.

[(8)][(14)] ["Equalizer line" means the connection from the skimmer housing to the pool, spa, or hot tub below the weir box, which:]

[(a)] [Is sized to satisfy pump demand and prevent air lock or loss of prime; and]

[(b)] [Contains a float valve assembly and pop-up valve.]

[(15)] "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

[(9)][(16)] "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.

[(10)][(17)] "Filter aid" means an enhancement to the efficiency of the filter media.

[(11)][(18)] "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

[(12)][(19)] "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit.

[(13)][(20)] ["Filtration rate" means the rate of water flow through a filter while in operation.]

[(21)] ["Float valve assembly" means a mechanism designed to disengage the skimmer in order to prevent air from entering the pump if the water level drops below the skimmer level.]

[(22)] "Flow meter" means a device that measures the flow of water through piping.

[(14)][(23)] ["Head loss" means the total pressure drop between the inlet and the outlet of a component.]

[(24)] "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.

[(15)][(25)] ["Hydrojet" means a fitting which blends air and water, creating a high-velocity, turbulent stream of air enriched water.]

[(26)] "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.

[(16)][(27)] "Main outlet" means an outlet fitting at the deepest point of the horizontal bottom of a pool through which water passes

to a recirculating pump or surge tank, and is often referred to as a "main drain".

~~[(17)](28) ["Modulating valve" means a valve that automatically regulates the flow of water from the main drain through the use of a float ball.]~~

~~[(29)] "Perimeter overflow system" means a channel at normal water level that extends completely around the pool perimeter and is used to remove surface debris, also known as an overflow or scum gutter.~~

~~[(18)](30) ["Perlite filter" means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that must be periodically replaced.]~~

~~[(34)] "Play feature" means a structure or feature that is added to a pool for the purpose of entertainment.~~

~~[(19)](32) "Plunge pool" means a pool or area within a pool designed as the termination point for a water slide or water ride.~~

~~[(20)](33) ["Pop-up valve" means a mechanism located under the float valve assembly that opens to allow water to reach the pump when the float valve is activated.]~~

~~[(34)] ["Positive shutoff valve" means a valve that completely stops the flow of water.]~~

~~[(35)] "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.~~

~~[(21)](36) "Public swimming and bathing facility" or "facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing, except for a pool at a private single family residence intended only for the use of the occupant[owner] and guests.~~

~~[(22)] "Public swimming and bathing facility enclosure" means an enclosure that surrounds and secures the public swimming and bathing facility which includes decking and pool.~~

~~[(23)](37) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.~~

~~[(24)](38) "Septum" means that part of the filter element consisting of cloth, closely woven fabric, or other porous material on which the filter media[cake] is deposited.~~

~~[(25)](39) "Skimmer" means a device designed to continuously remove surface film and water and return it through the filter.~~

~~[(26)](40) "Splash pad" means a public swimming and bathing facility that["Spray pad" means an area that:]~~

~~(a) Has aquatic play features that spray or drop water for the purpose of wetting people;~~

~~(b) Is designed so that there is no accumulation or ponding of water on the ground;[and]~~

~~(c) Includes both recirculating and non-recirculating water systems; and~~

~~(d) Includes splash pads operated by local governments as defined in KRS 211.205.~~

~~[(27)](41) ["State Building Code" means the requirements established in 815 KAR Chapter 7.]~~

~~[(42)] ["State Plumbing Code" means the requirements established in 815 KAR Chapter 20.]~~

~~[(43)] "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.~~

~~[(28)](44) ["Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of a pump.]~~

~~[(45)] "Superchlorinate" means the addition to the public swimming and bathing facility water of an amount of chlorine sufficient to produce a free available chlorine that is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.~~

~~[(29)](46) ["Surge tank" means a storage vessel within the pool recirculation system used to retain the water displaced by bathers.]~~

~~[(47)] ["Total discharge head" means the amount of water that a pump will raise water above its center line.]~~

~~[(48)] ["Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.]~~

~~[(49)] "Total residual chlorine" means the arithmetical sum of free available chlorine and combined chlorine, which is composed of the following components:~~

~~(a) Free available chlorine, which is the amount of chlorine available to inactivate microorganisms and that has not reacted with ammonia, nitrogenous material, and other contaminants in facility water; and~~

~~(b) Combined chlorine (also called "chloramine"), which is the amount of chlorine that has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds.~~

~~[(30)](50) ["Total suction head" means the amount of water that a pump will lift by suction.]~~

~~[(51)] ["Turnover rate" means the time requirements, in hours or minutes, for the circulation system to filter and recirculate a volume of water equal to the facility volume.]~~

~~[(52)] "Wading pool" means a pool or area within a pool where the water depth is twenty-four (24) inches or less.~~

~~[(53)] ["Weir box" means an overflow system placed at normal operating water surface level to remove surface debris and does not form a continuous loop around the pool perimeter.]~~

Section 2. Submission of Plans, Annual Permit Fee, and Inspection Fees.

(1) Submission of Plans.

(a) All new construction, changes in construction and equipment shall be in accordance with the requirements set forth in 902 KAR 10:123.

(b) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(2) Annual Permit Fee.

(a) An annual permit fee of \$110 for all public swimming and bathing facilities shall be:

1. Paid no later than May 1 each year; and

2. Paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

(b) A late payment fee of fifty-five (55) dollars shall be assessed on all annual permits not received by May 1 each year.

(c) Permits shall not be transferable.

(3) A fee shall be required for inspections conducted by the cabinet or the local health department to determine compliance with this administrative regulation for public swimming and bathing facilities.

(4) For public swimming and bathing facilities the annual inspection fee shall be:

(a) Assessed according to the total square footage of the water surface area:

(b) Calculated as established in this paragraph:

1. 1,000 square feet or less, the fee shall be ninety-nine (99) dollars;

2. 1,001 to 1,500 square feet, the fee shall be \$165;

3. 1,501 to 2,000 square feet, the fee shall be \$220; and

4. 2,001 and above, the fee shall be \$220 plus fifty-five (55) dollars for each additional 500 square feet of water surface area; and

(c) Include eighty-two (82.50) dollars and fifty cents for interactive water features.

(5) For splash pads, the annual inspection fee shall be \$275 per year.

(6) For spas and hot tubs, the annual inspection fee shall be \$165 per year.

(7) The inspection fee required by this section shall be:

(a) Paid to the local health department having jurisdiction by check or money order made payable to the Kentucky State Treasurer;

(b) Deposited in the environmental fee account; and

(c) Sent to the Department for Public Health for deposit with the Kentucky State Treasury [and Specifications for Approval.]

[(1)] [A person shall not construct, alter, or reconstruct a public swimming and bathing facility until approval of detailed plans and

specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.]

[(2)] [The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to 902 KAR 10:121.]

[(3)] [The front page of the plans submitted for review and approval shall contain the:]

[(a)] [Name of the swimming and bathing facility;]

[(b)] [Location by city and county;]

[(c)] [Name and contact information for the facility owner;]

[(d)] [Name of the installer; and]

[(e)] [Name of the engineer, architect, or person preparing the plans.]

[(4)] [Plans submitted by an engineer or architect shall bear the individual's official seal.]

[(5)] [Plans and specifications on public swimming and bathing facilities constructed by the state or local government, or for a facility with surface area greater than 1,600 square feet, shall be prepared by an engineer or architect registered in the State of Kentucky.]

[(6)] [The plans shall be:]

[(a)] [Drawn to scale;]

[(b)] [Accompanied by proper specifications to permit a comprehensive review of the plans, including the piping and hydraulic details; and]

[(c)] [Include:]

[1.] [A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;]

[2.] [A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;]

[3.] [The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, diving boards, safety equipment, and other related equipment; and]

[4.] [Drawing of equipment room showing placement of equipment.]

[(7)] [One (1) set of approved plans shall be kept at the job site and available for inspection.]

[(8)] [Upon completion of recirculation piping system construction and prior to the piping being tested for air pressure at ten (10) pounds per square inch of pressure for fifteen (15) minutes and covered, the owner or builder shall contact the cabinet for inspection.]

[(9)] [Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.]

[(10)] [The facility shall not be used before receiving a final inspection and written approval from the cabinet.]

[(11)] [Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.]

[(12)] [No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet.]

Section 3. Water Supplies.

(1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing:

(a) Sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility; and

(b) Enough water to raise the water level by at least one (1) inch in three (3) hours in:

1. Swimming, diving, or wave pools; and
2. Water slide plunge pools.

Section 4. [Water Quality and Sanitary Requirements for Bathing Beaches.]

[(1)] [Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the bathing beach area and the watershed.]

[(2)] [Physical quality. The following characteristics shall not be present in the beach area or watershed:]

[(a)] [Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; or]

[(b)] [Hazardous substances being discharged into bathing beach water or watershed.]

[(3)] [Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:]

[(a)] [It shall meet the requirements of 401 KAR 10:031. Satisfactory bacteriological results shall be obtained before approval for construction is considered; and]

[(b)] [There shall not be any sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.]

[(4)] [Chemical quality. There shall not be any discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.]

[Section 5.] Sewage and Wastewater Disposal.

(1) Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer.

(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085.

(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. This drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment for the breeding of insects.

(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable, to a system approved by the cabinet.

Section 5.[Section 6.] Refuse Disposal.

(1) All refuse at a public swimming and bathing facility shall be disposed of in a manner approved by the Energy and Environment Cabinet in KAR Title 401.

(2) An adequate number of refuse containers with tight fitting lids shall be provided at readily accessible locations at all public swimming and bathing facilities.

(3) Refuse containers in women's restrooms shall be kept covered.

(4) Bulk refuse storage areas shall be designed and maintained to prevent rodent harborage.

(5) Bulk refuse containers shall be:

(a) Of approved design and construction;

(b) Kept closed; and

(c) Placed upon an impervious surface within a suitable enclosure to prevent access by animals.

Section 6.[Section 7.] Facility Design and Construction.

(1) All public swimming and bathing facilities, and attendant structures, such as bathhouses, dressing rooms, or restrooms[, except for beach areas at bathing beaches,] shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.

(2) Bathhouses, restrooms, and drinking fountains shall not be required for the design and construction of splash pads. [The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet.]

Within these limits of safe swimming there shall not be any boating, underwater obstructions, or other hazards that may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.]

[(3)] [If diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats or inflatable features where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.]

[(4)] [Depth markings and lane lines:]

[(a)] [On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility, if possible, and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:]

[1.] [At the points of maximum and minimum depths;]

[2.] [At the point of change of slope between deep and shallow portions or transition point;]

[3.] [At intermediate two (2) feet increments of water depth; and]

[4.] [If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.]

[(b)] [Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet as measured peripherally.]

[(c)] [Depth markers shall be in Arabic numerals at least four (4) inches high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be plainly visible to persons in the facility.]

[(d)] [Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.]

[(e)] [A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet) except when the pool is being used for organized activities or during operation as a wave pool. The line shall be placed one (1) foot toward the shallow end from where the break occurs.]

Section 7.[Section 8:] Facility Water Treatment Systems.

(1)

[(a)] A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities[except bathing beaches].

2) [(b)] The recirculation system shall comply with the requirements set forth in 902 KAR 10:123. [All system components, including piping, shall bear the NSF International (NSF) potable water (NSF-pw) mark.]

[(c)] [Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.]

[(2)] [Pumping equipment:]

[(a)] [The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control and a flow meter shall be provided in the recirculation pump discharge piping.]

[(b)] [The turnover rate shall be:]

[Type of Facility]	[Turnover Required]
[Diving pools]	[8 hours or less]
[Wading pools, Spas, Therapy pools, Spray pad holding tanks, Facility equipped with a spray feature not providing additional filtered and disinfected water to the spray feature]	[30 minutes or less]
[Wave pools, Lazy rivers, Water rides]	[2 hours or less]
[Vortex pools, Plunge pools]	[1 hour or less]

[All other pools]

[6 hours or less]

[(e)] [Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.]

[(d)] [The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.]

[(e)] [The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:]

[1.] [Fifty (50) feet for all vacuum filters;]

[2.] [Seventy (70) feet for pressure sand or cartridge filters; or]

[3.] [Eighty (80) feet for pressure diatomaceous earth filters and perlite filters.]

[(f)] [If the pump is located at an elevation higher than the facility water line, it shall be self-priming.]

[(g)] [If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.]

[(h)] [A compound vacuum-pressure gauge or vacuum gauge shall be installed on the suction side of the pump.]

[(i)] [A pressure gauge shall be installed on the pump discharge line adjacent to the pump.]

[(j)] [Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.]

[(k)] [A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.]

[(3)] [Water heaters shall be installed at all indoor swimming and bathing facilities, and shall comply with the following:]

[(a)] [A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations.]

[(b)] [A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility.]

[(c)] [Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility.]

[(d)] [An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to swimming and diving pools and in excess of 104 degrees Fahrenheit for spas shall be provided and shall be accessible only to the facility operator.]

[(e)] [A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor.]

[(f)] [Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code.]

[(g)] [Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit.]

[(h)] [Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code.]

[(i)] [Heaters for indoor swimming and diving pools shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and]

[(j)] [All heaters shall meet the latest standards of applicable recognized testing agencies.]

[(4)] [A flow meter shall be:]

[(a)] [Located so that the rate of recirculation may be easily read.]

[(b)] [Installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence, except for those specifically designed without separation parameters; and]

[(c)] [Installed on each recirculation system, spray pad feature, waterslide, any other type of spray feature, and on multiple filtration units.]

[(5)] [Vacuum cleaning system:]

[(a)] [A vacuum cleaning system shall be:]

[1.] [Provided for all facilities except beaches; and]

[2.] [Capable of reaching all parts of the facility bottom.]

[(b)] [A vacuum system that utilizes the attachment of a vacuum hose to the suction piping through the skimmer may be provided.]

[(c)]

[1.] [If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting shall be provided:]

[a.] [Eight (8) to twelve (12) inches below the normal water level; and]

[b.] [With a cap or plug that is not removable by bathers:]

[2.] [Piping from this connection shall be:]

[a.] [To the suction side of the pump ahead of the hair and lint strainer:]

[b.] [At least one and one-half (1 1/2) inches in diameter; and]

[c.] [Equipped with a control valve near the junction with the pump suction line:]

[3.] [The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning.]

[(d)] [Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom.]

[(e)] [Vacuum systems shall only be used when the facility is closed to bathers.]

[(6)] [Piping, skimmer, and overflow system:]

[(a)] [Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.]

[(b)] [All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.]

[(c)] [The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping and ten (10) feet per second in pressure piping.]

[(d)] [Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.]

[(e)] [The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:]

[1.] [Main outlet bypass or other connections to waste:]

[2.] [Surge tank drain and overflow lines:]

[3.] [Pump discharge to waste lines; and]

[4.] [Gutter bypass to waste lines.]

[(7)] [Inlets.]

[(a)] [Each inlet shall be directionally adjustable:]

[(b)] [The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except that facilities equipped with skimmers shall have a velocity of flow in the range of ten (10) to twenty (20) feet per second.]

[(c)] [Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots.]

[(d)] [Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat.]

[(e)] [Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.]

[(f)] [Inlets shall be placed completely around the pool with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool.]

[(g)] [The number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15). Any fraction thereof would represent one (1) additional inlet.]

[(h)] [Pools greater than forty-five (45) feet wide shall be equipped with floor inlets in a grid pattern located no more than seven and five-tenths (7.5) feet from a wall and no more than fifteen

(15) feet apart. The grid shall form a continuous loop with no reduction in loop pipe sizing.]

[(i)] [A minimum of two (2) inlets is required on all pools, holding tanks, and bathing facilities, regardless of size.]

[(j)] [At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.]

[(k)] [Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.]

[(8)] [Outlets:]

[(a)] [All facilities, including holding tanks, shall be provided with a minimum of two (2) main outlets at the deepest horizontal point plumbed in parallel to permit the facility to be completely and easily drained.]

[(b)] [Openings and grates shall:]

[1.] [Conform to 15 U.S.C. 8003:]

[2.] [Be covered by a proper grating that is not removable by bathers:]

[3.] [Be at least four (4) times the area of the main outlet pipe:]

[4.] [Have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2) feet per second at maximum flow; and]

[5.] [Have a maximum grate opening width of one-fourth (1/4) inch.]

[(c)] [Additional outlets shall be provided in all facilities where the width of the facility is more than sixty (60) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series.]

[(d)] [A hydrostatic relief valve may be provided for in-ground swimming and diving pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer.]

[(e)] [Main outlet piping shall be sized for water removal at a rate of at least 100 percent of the design recirculation flow rate and at velocities specified in subsection (6)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.]

[(9)] [Perimeter overflow systems:]

[(a)] [Swimming and bathing facilities with a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system:]

[(b)] [A perimeter overflow system shall:]

[1.] [Extend completely around the facility:]

[2.] [Permit inspection, cleaning, and repair:]

[3.] [Be designed so that no ponding or retention of water occurs within any portion of the system:]

[4.] [Be designed to prevent entrapment of bathers or the passage of small children into an enclosed chamber:]

[5.] [Have an overflow lip which is rounded, provides a good handhold, and is level within two tenths (0.2) inch:]

[6.] [Provide for the rapid removal of all water and debris skimmed from the pool's surface:]

[7.] [Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate:]

[8.] [Discharge to the recirculation system:]

[9.] [Be provided with a minimum of two (2) outlet pipes that will not allow the overflow channel to become flooded when the facility is in normal use:]

[10.] [Require additional outlet pipes provided at one (1) per 150 lineal feet of perimeter overflow system or fraction thereof; and]

[11.] [Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe:]

[(10)] [All facilities that have perimeter overflow systems shall have a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, surge tank, or a combination of these. Main drain piping shall terminate eighteen (18) inches above the surge tank floor and be equipped with a modulating valve and a positive shutoff valve. Surge capacity for a diatomaceous earth (DE) filter is measured eighteen (18) inches above the filter media and the bottom of the gutter pipe:]

[(11)] [Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:]

[(a)] [At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof with a minimum of two (2) skimmers provided, except for spas, holding tanks, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.]

[(b)] [Skimmers shall be located to minimize interference with each other.]

[(c)] [The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate.]

[(d)] [Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow.]

[(e)] [Each skimmer shall be provided with an equalizer line at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve and cover that conforms to 15 U.S.C. 8003.]

[(f)] [All overflow water shall pass through a basket that can be removed without the use of tools.]

[(g)] [All pools not equipped with a perimeter overflow system shall have a smoothly contoured handhold coping not over two and one-half (2 1/2) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.]

[(12)] [All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:]

[(a)] [Discharge through an air gap of at least six (6) inches to a surge tank or a vacuum filter tank. If make-up water is added directly to the facility, the fill spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and]

[(b)] [Through piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.]

[(13)] [Filtration:]

[(a)] [Filters shall comply with the following:]

[1.] [Pressure filters shall have:]

[a.] [Pressure gauges:]

[b.] [An observable free fall, or a sight glass installed on the backwash discharge line; and]

[c.] [A manual air-relief valve at the high point:]

[2.] [The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle:]

[3.] [All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and]

[4.] [Filter media shall be listed as NSF approved.]

[(b)] [Each facility shall have separate filtration and treatment systems.]

[(c)] [Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day, except if the facility is closed for repairs or at the end of the swimming season.]

[(d)] [Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.]

[(e)] [At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.]

[(f)] [The filter system shall be designed with necessary valves and piping to permit filtering to the pool.]

[(g)] [High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.]

[(h)] [Diatomaceous earth filters shall comply with the following requirements:]

[1.] [The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed:]

[2.] [A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoating:]

[3.] [If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day:]

[4.] [Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water:]

[5.] [All filters shall be equipped for cleaning by one (1) or more of the following methods:]

[a.] [Backwashing:]

[b.] [Air pump assist backwashing:]

[c.] [Spray wash:]

[d.] [Water pressure to wash vacuum filter; or]

[e.] [Agitation; and]

[6.] [Perlite may be used in filters listed by NSF for perlite, but it may not be substituted for diatomaceous earth without NSF listing.]

[(i)] [Vacuum sand filters shall comply with the following requirements:]

[1.] [The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute, whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and]

[2.] [Overflow piping shall be provided in order to drain overflow water.]

[(j)] [Cartridge filters shall comply with the following requirements:]

[1.] [Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons:]

[2.] [Cartridge filters shall only be used on indoor pools:]

[3.] [The design filtration rate shall not exceed fifteen hundredths (0.15) gallons per minute per square foot of filter surface area; and]

[4.] [A clean duplicate set of cartridges shall be maintained at the facility.]

[(14)] [Disinfectant and chemical feeders:]

[(a)] [The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control:]

[(b)] [Equipment capacity:]

[1.] [Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of:]

[a.] [Eight (8) ppm or two and seven-tenths (2.7) pounds per day chlorine gas or its equivalent for each 10,000 gallons of pool volume for outdoor facilities; or]

[b.] [Three (3) ppm or one (1) pound per day for chlorine gas or its equivalent for each 10,000 gallons of pool volume for indoor facilities based on the turnover rates specified in subsection (2)(b) of this section:]

[2.] [The equipment for supplying chlorine shall not be controlled by a day-date clock:]

[3.] [The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter unless the chlorine injection point is located within the surge tank:]

[4.] [Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.50) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment:]

[5.] [Supplemental NSF listed ultraviolet (UV) light disinfection systems:]

[a.] [Shall be provided on all splash pads with a recirculating water system:]

[b.] [Shall be installed on a bypass line; and]

[c.] [Shall be equipped with a flow indicator; and]

[d.] [May be used on other facilities as supplemental disinfection:]

[6.] ~~[Ozone may be used as a supplement to chlorination or bromination. Ozonation equipment will be considered by the cabinet on a case-by-case basis.]~~

[7.] ~~[No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than five hundredths (.05) ppm at all times either in the vicinity of the ozonator or at the pool water surface.]~~

[c] ~~[If positive displacement pumps, or hypochlorinators, are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.]~~

[d] ~~[Gas chlorinators shall only be used in a pre-existing facility and shall comply with applicable sections of 29 C.F.R. 1910.119.]~~

[e] ~~[pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.]~~

~~[(15)]~~

[a] ~~[Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of a DPD (Diethyl-P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents shall not be acceptable.]~~

[b] ~~[Test kits shall be used to determine the total residual chlorine either directly or by summation of free chlorine and combined chlorine test results. Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm.]~~

[c] ~~[pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4).]~~

[d] ~~[Both tests shall be accurate to within two-tenths (0.2) units.]~~

[e] ~~[Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.]~~

Section 8.[Section 9.] Operational Water Quality Standards.

(1) Disinfectant residuals for swimming and diving pools, holding tanks, wading pools, water slides, and wave pools:

(a) Chlorine residual shall be maintained between one (1) and five (5) ppm as free available chlorine.

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant.

(c) Pools stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one and five-tenths (1.5) to five (5) ppm free available chlorine residual; and

3. Cyanuric acid concentration not to exceed fifty (50) ppm.

(d) [If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) ppm.]

(2) Disinfectant residuals for spas:

(a) Chlorine residual shall be maintained between two (2)~~one (1)~~ and five (5) ppm as free available chlorine;

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant; and

(c) [If the level of chloramines exceeds two-tenths (0.2) ppm, superchlorination is required. During the superchlorination process and until the time that free chlorine levels return to five (5) ppm or less, the facility shall be closed.]

(3) The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(4) Turbidity. Facility water shall have sufficient clarity at all times so that:

(a) A black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the pool; and

(b) The openings of the main outlet grate are clearly visible by an observer on the deck.

(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 ppm, as determined by suitable test kits.

(6) Temperature.

(a) The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76) degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes as competition, physical therapy, or instruction of children. Variances may be approved if proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated and that the variance will not jeopardize public health.

(b) Air temperature at an indoor facility shall be higher than the water temperature, except for spas.

(c) Water temperatures for any facility including spas shall not exceed 104 degrees Fahrenheit.

(d) All facilities with heated water shall have at least one (1) break proof thermometer located within the facility water in a conspicuous location. The thermometer shall be securely mounted to prevent tampering by bathers.

(7) Testing Equipment.

(a) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of a DPD (Diethyl-P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents shall be prohibited.

(b) Test kits shall be used to determine the total residual chlorine either directly or by summation of free chlorine and combined chlorine test results. Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm.

(c) pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4).

(d) Both tests shall be accurate to within two-tenths (0.2) units.

(e) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.

(8) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, temperature, and pH shall be checked at least three (3) times daily with a greater frequency if bather load or climatic conditions warrant.

(b) Turbidity shall be checked daily, or more often as needed.

(c) The following shall be checked weekly, or more often as needed:

1. Alkalinity; and

2. Cyanuric acid, if used.

[9][(8)] All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.

Section 9.[Section 10.] General Facility Operation and Maintenance.

(1) All facilities shall be maintained:

(a) Free from sediment and debris; and

(b) In good repair.

(2) Decks shall be kept clean. Indoor decks shall be disinfected at least weekly.

(3) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other debris. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective

surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the perimeter overflow or skimmer system.

(4) Inlet fittings. Inlets shall be checked frequently to ~~ensure~~^{insure} that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(5) Bather preparation facilities.

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily.

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair.

(c) Floors shall be maintained in a nonslip condition.

(d) Soap dispensers shall be filled and operable.

(e) Adequate supplies of toilet tissue, disposable hand drying towels, or suitable hand drying devices shall be maintained.

(6) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(7) Safety.

(a) All public swimming and bathing facility enclosures ~~shall~~^{facilities shall have adequate enclosures that} meet the specifications of Department of Housing, Buildings and Construction. Doors or gates in the facility enclosure shall be kept closed and locked if the facility is closed.

(b) Facility enclosures shall not be required for splash pads.

(8) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(9) Diving equipment, ladders, hand rails, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(10) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility.

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day.

(c) Recirculation pumps. The pump shall not be throttled on the suction side during normal operation, except for the main drain~~bottom drain valve~~, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(11) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened, as necessary, to remove air which collects in the filter and following each backwash.

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoat before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoat operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) to one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(12) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(13) Flow meters. Flow meters shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(14) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(15) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(16) Chlorinated cyanurates. The use of chlorinated cyanurates shall be prohibited.

(17) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH.

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical.

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH.

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical.

(e) The cabinet shall be consulted if there are unusual pH problems including corrosion, scaling, or wide fluctuations in pH.

(18) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose and removed by the suction cleaner and filtration system.

(19) Miscellaneous chemicals.

(a) Chemicals other than approved disinfectants shall be used only with the advice and under the supervision of the cabinet.

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat, and in a clean, dry, and well-ventilated place that prevents unauthorized access to the chemicals.

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions.

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) ppm.

(20) Equipment rooms shall comply with the following requirements:

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room that affords protection from the weather and^[-] prevents unauthorized access.

~~(b) [- has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection;]~~

~~[(b)] [The equipment room floor shall slope toward drains and shall have a nonslip finish;]~~

~~[(c)] [A hose bib with a vacuum breaker shall be installed in the equipment room;]~~

~~[(d)]~~ Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and

~~[(c)]~~~~(e)~~ The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

~~[(24)]~~ [Maintenance of bathing beaches.]

~~[(a)]~~ [Beach areas shall be maintained free of litter and water borne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.]

~~[(b)]~~ [A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas and shall extend beneath the water of all wading and swimming areas.]

~~[(c)]~~ [Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis and immediately after high water conditions for floating or sunken debris, obstructions at diving areas, and high water turbidity, which may present safety hazards to bathers.]

Section 10.~~[Section 11.]~~ Facility Records.

(1) The operator of each facility shall keep a daily record of information regarding operation of the facility on the DFS-352, Swimming Pool Log Sheet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records shall be kept showing daily or weekly results, as applicable, for:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level, if applicable; and

(c) Equipment malfunctions.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

Section 11.~~[Section 12.]~~ Safety.~~[Personnel.]~~

(1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times when the facility is open for use.

(2) Lifeguards shall comply with the requirements set forth in 902 KAR 10:125 Section 2.

(3) Safety equipment shall comply with the requirements set forth in 902 KAR 10:125 Section 3.~~[Lifeguards.]~~

~~[(a)]~~ [Lifeguards shall be on duty at a facility that has 2,000 square feet or greater of water surface area at a rate of one (1) per 2,000 square feet or fraction thereof.]

~~[(b)]~~ [Lifeguards shall be provided at all facilities, regardless of water surface area, that allow bathers seventeen (17) years of age or under to enter the facility area without a responsible adult present at a rate of one (1) lifeguard per 2,000 square feet of water surface area or fraction thereof.]

~~[(c)]~~ [All facilities that are not required to provide lifeguards shall post and enforce the following rules at all entrance points: "No Lifeguard on Duty" and "No person may enter the facility area alone or swim alone."]

~~[(d)]~~ [Additional lifeguards shall be provided if necessary depending on bather load, bather activities, size, and configuration of the facility, and the amount of surface area for shallow and deep water areas, emergencies, and the lifeguard's ability to see bathers.]

~~[(e)]~~ [A facility may submit an alternative lifeguard staffing plan that:]

~~[1.]~~ [Has been certified by an independent third-party compliance specialist;]

~~[2.]~~ [Designates the number of lifeguards necessary to ensure each lifeguard is capable of viewing the entire area of the assigned zone of patron surveillance; and]

~~[3.]~~ [Ensures the lifeguard is able to reach the furthest extent of the assigned zone of patron surveillance within twenty (20) seconds.]

~~[(f)]~~ [The alternative lifeguard staffing plan shall be:]

~~[1.]~~ [On file with the Public Safety Branch within the Department for Public Health;]

~~[2.]~~ [Submitted to the local health department of jurisdiction; and]

~~[3.]~~ [Resubmitted if there is a change in;]

~~[a.]~~ [The shape or size of the swimming pool;]

~~[(b.)~~ [The surrounding areas that would obstruct the lifeguard's view of the bottom of the pool; or]

~~[(c.)~~ [Ownership of the facility.]]

~~[(g)]~~ [Lifeguards shall be provided at all bathing beaches that allow bathers seventeen (17) years of age or younger without a responsible adult at a rate of one (1) per 100 linear feet of beach front or a fraction thereof. Bathing beaches that do not provide lifeguards shall post the following warnings: "No lifeguard on duty. Swim at your own risk. No person seventeen (17) years of age or younger may swim without a responsible adult present."]

~~[(h)]~~ [A bathing beach that has an inflatable water attraction shall have a minimum of one (1) lifeguard per attraction, with additional lifeguards provided to ensure all areas surrounding the attraction are clearly visible at all times.]

~~[(3)]~~ [Lifeguards shall comply with the following:]

~~[(a)]~~ [Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;]

~~[(b)]~~ [Lifeguards shall be dressed in swimming attire; and]

~~[(c)]~~ [Lifeguards assigned to the supervision of the facility shall not be subject to duties that would:]

~~[1.]~~ [Distract their attention from proper observation of persons in the facility area; or]

~~[2.]~~ [Prevent immediate assistance to persons in distress in the water.]]

[Section 13.] [Safety Equipment.]

~~[(1)]~~ [Facilities requiring lifeguards shall have a minimum of one (1) elevated lifeguard chair per on-duty lifeguard. A lifeguard chair shall be provided for each 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.]

~~[(2)]~~ [Beaches requiring lifeguards shall provide an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The chairs shall be located on the beach to provide a clear view of all areas under surveillance and to provide the quickest response time.]

~~[(3)]~~ [One (1) unit consisting of the following lifesaving equipment shall be provided for 2,000 square feet of water surface area and an additional unit for each additional 2,000 square feet or fraction thereof:]

~~[(a)]~~ [A U.S. Coast Guard approved ring buoy no more than fifteen (15) inches in diameter with a three-sixteenths (3/16) inch rope attached that measures one and one-half (1 1/2) times the maximum pool width;]

~~[(b)]~~ [Rescue tubes may be used when lifeguards are present;]

~~[(c)]~~ [A shepherd's hook securely attached to a one (1) piece pole not less than twelve (12) feet in length; and]

~~[(d)]~~ [One (1) backboard with head immobilizer and at least three (3) straps, for back and neck injuries.]

~~[(4)]~~ [Facilities limited to small spas, with less than 144 square feet of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.]

~~[(5)]~~ [In addition to subsection (3) of this section, a beach shall provide the following lifesaving equipment:]

~~[(a)]~~ [Paddle board or surfboard;]

~~[(b)]~~ [At least one (1) lifeboat and one (1) unit of lifesaving equipment; and]

~~[(c)]~~ [A torpedo shaped buoy.]

~~[(6)]~~ [All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.]

~~[(7)]~~ [Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove this equipment from its established location. This

equipment at beaches shall be centrally located in a conspicuous place that is readily accessible, with the lifeboat required by subsection (5)(b) of this section being located in the most central location.]

[(8)] [The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.]

[(9)] [All facilities shall provide an emergency automatic pump shut off located adjacent to the telephone.]

[(10)]

[(a)] [All facilities shall have a non-pay landline telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard located on the deck that is readily accessible and conspicuously located. A cordless telephone shall be prohibited.]

[(b)] [A two (2) way radio communication system to a manned telephone system may be substituted at an isolated beach facility.]

[(c)] [The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.]

[(11)] [All drownings and injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health.]

[(12)]

[(a)] [A facility submitting an alternative lifeguard staffing plan pursuant to Section 12(2)(e) of this administrative regulation may submit a request for a variance to the safety equipment requirements of this section to the Environmental Management Branch in the Department for Public Health.]

[(b)] [The variance requested shall not affect the safe and healthful operation of the facility.]

[(c)] [Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of this section and that no safety or health hazard would be created if the variance is granted.]

Section 12.[Section 14.] Spectator and Bather Administrative Regulations.

(1) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility shall be refused to a person:

1. Having any contagious disease or infectious conditions, such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;

2. Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and

3. Under the influence of alcohol, illegal substances, or exhibiting erratic behavior;

(b) Food, drink, gum, tobacco, or vapor producing products shall not be allowed, other than in specially designated and controlled sections of the facility area;

(c) Personal conduct within the facility shall assure that the safety of self and others is not jeopardized;

(d) Running and boisterous or rough play shall not be permitted, except for supervised water sports;

(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water shall not be permitted;

(f) Glass, soap, or other material that creates hazardous conditions or interferes with efficient operation of the facility shall not be permitted in the facility or on the deck;

(g) All apparel worn in the facility shall be clean;

(h) Diving in shallow water shall not be permitted;

(i) Caution shall be exercised in the use of diving boards; and

(j) Service animals may be allowed in the deck area but shall be excluded from the water.

(3) Due to the nature of splash pads, animals shall be excluded from the splash pad and deck area [bathing beaches, subsection (2)(c), and (f) of this section shall not apply].

(4) In addition to the requirements of subsection (2) of this section, a caution sign shall be mounted adjacent to all spas and contain the following warnings:

"CAUTION
Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high or low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.
Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.
Do not use at water temperatures greater than 104 degrees Fahrenheit.
Do not use alone.
Unsupervised use by children is prohibited.
Enter and exit slowly.
Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.
Long exposure may result in nausea, dizziness, fainting, or death.
Keep all breakable objects out of the area.
Shower before entering the spa."

(5) A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.

Section 13.[Section 15.] Swimming Suits and Towels Furnished by Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.

Section 14.[Section 16.] Facility Inspection.

(1) Seasonal facilities.

(a) All owners or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this administrative regulation, except in instances where the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet may require one (1) of the full facility inspections to be performed prior to a facility's opening.

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation indoor facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.

(3) Facilities [New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.]

[(4)] [Facilities other than beaches] shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of:

(a) Disinfectant residual testing and combined disinfectant in ppm;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing, if cyanuric acid stabilizers are used;

(e) Turbidity assessment;

(f) Temperature testing, if heated water facility;

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris; and

(i) Other checks as necessary.

[(4)] [(5)] [Beaches shall be monitored once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation, bacteriological water sampling, and safety checks as necessary.]

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[(6)] The cabinet may make as many additional inspections and inspections as necessary for the enforcement of this administrative regulation.

(5)[(7)] When an agent of the cabinet makes an inspection of a public swimming and bathing facility, the findings shall be recorded on the DFS-349, Public Swimming and Bathing Facilities Inspection Report[, or DFS-350, Public Swimming and Bathing Facilities Beach Inspection Report,] and a copy provided to the facility owner or operator. The inspection report shall:

- (a) Set forth any violation observed;
- (b) Establish a specific and reasonable period of time for the correction of the violation observed; and
- (c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 15.[Section 17.] Water Sampling and Testing.

(1) A water sample may be collected from facilities if inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak. These samples shall be submitted to the Division of Laboratory Services in an approved container and by approved sampling procedures for analysis.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

- (a) Total coliform;
- (b) E. coli; and
- (c) Pseudomonas organisms.

(3) [~~Multiple samples shall be collected at beaches to assure adequate representation of the entire facility water area.~~]

[(4)] If a sample tests positive for a contaminant, the test shall be repeated within one (1) to seven (7) days.

[(4)][(5)] For a facility[~~other than a bathing beach~~], no more than two (2) consecutive samples shall be positive for:

- (a) More than two (2) coliform organisms per 100 milliliter (mL);
- (b) Pseudomonas organisms; or
- (c) E. coli.

[(5)][(6)] [~~Beaches shall comply with the requirements of Section 4 of this administrative regulation prior to opening for the season and during the operating season.~~]

[(7)] Additional samples may be requested to ensure compliance with this administrative regulation.

Section 16.[Section 18.] Bacteriological Quality of Facility Water.

[(1)] [~~For facilities other than beaches,~~] No more than two (2) consecutive samples shall:

- (1)[(a)] Contain more than 200 bacteria per mL;
- (2)[(b)] Have a positive confirmatory test for coliform organisms in any of the five (5) ten (10) mL portions of a sample or more than two (2) coliform organisms per 100 mL when the membrane filter test is used;
- (3)[(c)] Have a positive confirmatory test for pseudomonas organisms; or
- (4)[(d)] Have a positive test for fecal coliform organisms.

[(2)] [~~Beaches shall comply with the standards established in Section 4(3)(a) of this administrative regulation.~~]

Section 17.[Section 19.] Conditions requiring Closure of a Facility and Enforcement Provisions.

(1) The cabinet shall immediately order the closure of a facility and prohibit any person from using the facility by written notice to the facility owner or operator if:

- (a) There is an immediate danger to health or safety;
- (b) Violations of the Virginia Graham Baker Act;
- (c) The water does not conform to the bacteriological standards contained in this administrative regulation;
- (d) [~~An environmental survey of the area shows evidence of sewage, other pollutants, or toxic materials being discharged to waters tributary to a beach;~~]

[(e)] Turbidity levels of facility water do not meet the requirements of Section 8[9](4) of this administrative regulation;

[(e)][(f)] The disinfectant residual is outside the range prescribed in this administrative regulation;

[(f)][(g)] The pH is outside the range prescribed by this administrative regulation;

[(g)][(h)] The cyanuric acid level exceeds fifty (50) ppm;

[(h)][(i)] There is no pool operator available;

[(i)][(j)] There has been a fecal accident in the pool;

[(j)][(k)] The owner, operator, an employee, or representative of the owner interferes with duly authorized agents of the cabinet who bear proper identification, in the performance of their duties;

[(k)][(l)] If recirculation systems, filtration systems, or disinfectant systems are not in operation, with exceptions for maintenance and seasonal shut down, **or replaced without prior approval;** or

[(l)][(m)] If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the facility, and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order may request an administrative conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

(5) [~~If a source of sewage, pollution, or toxic material discovered as a result of an environmental survey is eliminated, the cabinet may authorize the reopening of a beach.~~]

[(6)] In all other instances of a violation of the provisions of this administrative regulation[, or 902 KAR 40:121 for the nonpayment of fees,] the cabinet shall serve upon the owner or operator a written notice specifying the violation in question and afford a reasonable opportunity to correct the violation. An owner or operator who fails to comply with any written notice issued under the provisions of this administrative regulation [~~or 902 KAR 40:121~~] shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of the notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet by the owner or operator within the ten (10) day period.

[(6)][(7)] All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

[(7)][(8)] Any person whose facility has been closed may, at any time, make application for a reinspection for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

[(8)][(9)]

(a) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400.

(b) Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator, within the ten (10) day period.

Section 18.[Section 20.] Existing Facilities and Equipment. [(1)] Existing facilities and equipment being used prior to the effective date of this administrative regulation[~~August 1, 1996,~~] that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

(1)[(a)] Are in good repair;

(2)[(b)] Are capable of being maintained in a sanitary condition;

(3)[(c)] Meet facility water quality standards; and

(4)[(d)] Create no health or safety hazard.

[(2)] [~~If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's~~]

responsibility to notify the cabinet as to what was replaced and what was used for a replacement.]

Section 19.~~[Section 24.]~~ Effect on Local Administrative Regulations. Compliance with this administrative regulation shall not relieve any person from compliance with any other state or local laws dealing with pool operation and maintenance matters or zoning requirements that may also be applicable.

~~[Section 22.] [Variances for Construction Requirements.]~~

~~[(1)] [All facilities shall be constructed or remodeled in compliance with the provisions of this administrative regulation, except that an applicant may request a variance if the cabinet determines that the variance would not affect seriously the safe and healthful operation of the facility.]~~

~~[(2)] [Before granting a variance, the cabinet shall require proof from the applicant documenting that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.]~~

Section 20.~~[Section 23.]~~ Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "DFS-349, Public Swimming and Bathing Facilities Inspection Report", 11/2024~~[3/2024]~~; and

~~(b) [5/2021];~~

~~[(b)] ["DFS-350 Public Swimming and Bathing Facilities Beach Inspection Report", 5/2021; and]~~

~~[(e)] "DFS-352 Swimming Pool Log Sheet", 5/2021.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 12, 2024

FILED WITH LRC: November 13, 2024 at 3:30 p.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the operational requirements for public swimming and bathing facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all public swimming and bathing facilities operate in a safe and sanitary manner to reduce the incidence of recreational water related illnesses and outbreaks and reduce pool chemical-associated health events.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure public swimming and bathing facilities operate in a safe and sanitary manner, ensure the water quality standard of these facilities to control for contamination, ensure proper disinfection

of water and facilities, and ensure all equipment utilized is fully operational.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation removes the engineering, personnel, and safety requirements as those requirements are incorporated into new administrative regulations and adds the fee structure for permitting and inspection from 902 KAR 10:121. The amended after comments version revises definitions for clarity, updates the language regarding the main drain for consistency with federal language, and amends the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: 2024 Ky Acts ch. 116 creates a new section of KRS Chapter 211 to define class A and B pools and to establish exceptions for when a lifeguard is required to staff these classes of pools. The amendment to this administrative regulation is necessary to address the requirements of 2024 Ky Acts ch. 116.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 194A.050(2) authorizes the secretary to promulgate regulations to establish a fee schedule for permitting and annual inspection of efforts regarding compliance with program standards administered by the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure public swimming and bathing facilities operate in a safe and sanitary manner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 2,254 public swimming pools, bathing facilities, and spas regulated by the department. The department receives approximately 115 requests for plan review each year. There are sixty-one (61) local health departments that perform the routine inspection activities to ensure compliance with this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pool operators and owners will need to be aware of the updated requirements and ensure their facilities are in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated facilities are already currently required to be in compliance with these operational standards. There will be no added costs to facilities to be in compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated facilities will be able to operate public swimming and bathing facilities in a manner that protects all bathers and reduces the probability of a waterborne disease outbreak at the facility.

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

(a) Initially: This is an ongoing program, there is no additional cost.

(b) On a continuing basis: This is an ongoing program, the costs associated with this administrative regulation will be absorbed by current program funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded by a mix of state general fund dollars and fees collected for plan review and inspection activities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fee structure added to this administrative regulation represents a ten (10) percent increase in the current permitting and inspection fees in 902 KAR 10:121.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: While the amendment to this administrative regulation includes permitting and inspection fees, these are not new fees. The current permitting and inspection fee structure is in 902 KAR 10:121 and that administrative regulation will be repealed per 902 KAR 10:122 to be filed at the same time as this regulation. This will allow the regulated community to have all operational information, including required fees, in one administrative regulation. This administrative regulation proposes to increase the current fees by ten (10) percent.

(9) TIERING: Is tiering applied? Tiering is not applied. All regulated entities are required to comply with the provisions of this administrative regulation.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.180, and 2024 Ky Acts ch. 116.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department for Public Health, Division of Public Health Protection and Safety, is the promulgating agency. The amendment to this administrative regulation will impact Kentucky state parks that have a swimming pool available for guests.

(a) Estimate the following for the first year:

Expenditures: The costs associated with administering the permitting and inspection program is \$2,376,885. This is a shared cost between the state and local health departments.

Revenues: The total revenue generated by the amendment to this administrative regulation will be \$576,631.

Cost Savings: This administrative regulation does not generate cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. The revenues received will not change in subsequent years without an amendment to this administrative regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation impacts local health departments who inspect the regulated entities and local governments who operate a public swimming or bathing facility.

(a) Estimate the following for the first year:

Expenditures: The costs associated with administering the permitting and inspection program is \$2,376,885. This is a shared cost between the state and local health departments.

Revenues: The total revenue generated by the amendment to this administrative regulation will be \$576,631.

Cost Savings: This administrative regulation does not generate cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

(4) Identify additional regulated entities not listed in questions (2) or (3): Additional regulated entities include hotels, and recreational facilities, such as water parks, health facilities and athletic clubs, schools including colleges and universities, swim clubs and country clubs, youth camps, and any other entity that provides a public swimming and bathing facility.

(a) Estimate the following for the first year:

Expenditures: may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. The revenues received will not change in subsequent years without an amendment to this administrative regulation.

Revenues: This administrative regulation does not generate revenue for the regulated entities listed in (4).

Cost Savings: This administrative regulation does not generate cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures for the regulated entities listed in (4) will not change without an amendment to this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fees associated with this administrative regulation are not new fees. They are currently listed in 902 KAR 10:121 and that administrative regulation will be repealed per 902 KAR 10:122 to be filed at the same time as this regulation. The proposed fee structure for public swimming and bathing facilities is a ten (10) percent increase of the current fee. The estimated total revenue for this administrative regulation will be \$576,631. The total expenditure of \$2,376,885 to implement this administrative regulation is a shared cost between the state and local health departments.

(b) Methodology and resources used to determine the fiscal impact: The estimated total revenue was determined by multiplying the number of current permitted public swimming and bathing facilities in each category by the proposed fee increase. Each public swimming and bathing facility will be assessed an annual permit fee. That estimate was determined by multiplying the total number of permitted facilities by the proposed fee. The estimated inspection fee total and the permit fee total were added together to calculate the total revenue. Proposed Inspection Fee Structure: Public and Semi-public Swimming Pools. Pool size: 1,000 or less square feet of surface water; 1,350 pools; Proposed fee of \$99; Potential revenue of \$133,650. Pool size: 1,001 to 1,500 square feet of surface water; 419 pools; Proposed fee of \$165; Potential revenue of \$69,135. Pool size: 1,501 to 2,000 square feet of surface water; 143 pools; Proposed fee of \$220; Potential revenue of \$31,460. Pool size: 2,001 or more square feet of surface water; 342 pools; Proposed fee of \$220 + \$55 for each additional 500 square feet; Potential revenue of \$94,050 (at a minimum). Total public and semi-public swimming pools: 2,254; total potential revenue: \$328,295. Annual Permit Fee for all Public and Semi-public Swimming Pools: 2,254 pools; proposed fee of \$110; potential revenue of \$247,940.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) While the total potential revenue for this administrative regulation is \$576,631, no one entity will have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to reach this conclusion: The above chart of the proposed fee structure shows that potential revenue is the combined total for all regulated entities.

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

902 KAR 10:123. Kentucky public swimming and bathing facilities construction requirements.

RELATES TO: KRS 211.015, 211.090, 211.210, 211.220, 211.990(2), 29 C.F.R. 1910.119, 15 U.S.C. 8003

STATUTORY AUTHORITY: KRS 194A.050, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform standards for construction of public swimming pools and bathing facilities.

Section 1. Definitions.

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(1) "Accessible" means having access to a fixture, connection, appliance or equipment, even if it is necessary to remove an access panel, door, or similar obstruction.

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other device, and the flood level rim of the receptacle.

(4) "Approved" means that which is acceptable to the cabinet.

(5) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(6) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(7) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.

(8) "Bather" means a person using a public swimming and bathing facility.

(9) "Cabinet" is defined by KRS 211.015(a).

(10) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(11) "Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that will need to be periodically replaced.

(12) "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.

(13) "Equalizer line" means the connection from the skimmer housing to the pool, spa, or hot tub below the weir box, which:

(a) Is sized to satisfy pump demand and prevent air lock or loss of prime; and

(b) Contains a float valve assembly and pop-up valve.

(14) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

(15) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.

(16) "Filtration rate" means the rate of water flow through a filter while in operation.

(17) "Flow meter" means a device that measures the flow of water through piping.

(18) "Head loss" means the total pressure drop between the inlet and the outlet of a component.

(19) "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.

(20) "Hydrojet" means a fitting which blends air and water, creating a high velocity, turbulent stream of air enriched water.

(21) "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.

(22) "Main outlet" means an outlet fitting at the deepest point of the horizontal bottom of a pool through which water passes to a recirculating pump or surge tank, and is often referred to as a "main drain".

(23) "Modulating valve" means a valve that automatically regulates the flow of water from the main drain through the use of a float ball.

(24) "Perimeter overflow system" means a channel at normal water level that extends completely around the pool perimeter and is used to remove surface debris, also known as an overflow or scum gutter.

(25) "Perlite filter" means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that must be periodically replaced.

(26) "Play feature" means a structure or feature that is added to a pool for the purpose of entertainment.

(27) "Plunge pool" means a pool or area within a pool designed as the termination point for a water slide or water ride.

(28) "Positive shutoff valve" means a valve that completely stops the flow of water.

(29) "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.

(30) "Public swimming and bathing facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing, except for a pool at a private single family residence intended only for the use of the owner and guests.

(31) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(32) "Skimmer" means a device designed to continuously remove surface film and water and return it through the filter.

(33) "Splash pad" means an area that:

(a) Has aquatic play features that spray or drop water for the purpose of wetting people;

(b) Is designed so that there is no accumulation or ponding of water on the ground;

(c) Includes both recirculating and non-recirculating water systems; and

(d) Includes splash pads operated by local governments as defined in KRS 211.205.

(34) "State Building Code" means the requirements established in 815 KAR Chapter 7.

(35) "State Plumbing Code" means the requirements established in 815 KAR Chapter 20.

(36) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(37) "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of a pump.

(38) "Surge tank" means a storage vessel within the pool recirculation system used to retain the water displaced by bathers.

(39) "Total discharge head" means the amount of water that a pump will raise water above its center line.

(40) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(41) "Total suction head" means the amount of water that a pump will lift by suction.

(42) "Turnover rate" means the time requirements, in hours or minutes, for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(43) "Wading pool" means a pool or area within a pool where the water depth is twenty- four (24) inches or less.

Section 2. Submission of Plans and Specifications for Approval.

(1) A person shall not construct, alter, or reconstruct a public swimming and bathing facility until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.

(2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to Section 3 of this administrative regulation.

(3) The front page of the plans submitted for review and approval shall contain the:

(a) Name of the swimming and bathing facility;

(b) Location by city and county;

(c) Name and contact information for the facility owner;

(d) Name of the installer; and

(e) Name of the engineer, architect, or person preparing the plans.

(4) Plans ~~[shall be]~~ submitted by an engineer or architect licensed in the state of Kentucky shall[and] bear the individual's official seal.

(5) Plans and specifications on public swimming and bathing facilities constructed by the state or local government, or for a facility with surface area greater than 1,600 square feet, shall be prepared by an engineer or architect registered in the State of Kentucky.

(6) The plans shall be:

(a) Drawn to scale;

(b) Accompanied by proper specifications to permit a comprehensive review of the plans, including the piping and hydraulic details; and

(c) Include:

1. A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

2. A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

3. The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, diving boards, safety equipment, and other related equipment;

4. Drawing of equipment room showing placement of equipment; and

5. Appropriate fees.

(7) One (1) set of approved plans shall be kept at the job site and available for inspection.

(8) Upon completion of recirculation piping system construction and prior to the piping being tested for air pressure at ten (10) pounds per square inch of pressure for fifteen (15) minutes and covered, the owner or builder shall contact the cabinet for an inspection.

(9) Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.

(10) The facility shall not be used before receiving a final inspection and written approval from the cabinet, as well as any other affected state and local regulatory agencies. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(11) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(12) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet.

Section 3. Fees for Plan Review and Construction Inspection.

(1) A fee shall be required for all plan reviews and construction inspections by the cabinet or the local health department to determine compliance with this administrative regulation.

(2) The fee for plan review shall be calculated as follows:

(a) Swimming and bathing facility plan review for gutter pools, the fee shall be \$346.50

(b) Swimming and bathing facility plan review for skimmer pools, the fee shall be \$173.25

(c) Swimming and bathing facility plan review for minor reconstruction, the fee shall be \$115.50

(3) The fee required shall include \$82.50 for interactive water features.

(4) The fee for swimming and bathing facility construction inspection shall be calculated as follows:

(a) Pre-renovation evaluation/consultation, the fee shall be \$231.00

(b) Rough-in construction inspection, the fee shall be \$115.50

(c) Final construction inspection, the fee shall be \$173.25

(5) The plan review and construction inspection fees required by this section shall be paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

Section 4. Water Supplies.

(1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing:

(a) Sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility; and

(b) Enough water to raise the water level by at least one (1) inch in three (3) hours in:

1. Swimming, diving, or wave pools; and

2. Water slide plunge pools.

Section 5. Sewage and Wastewater Disposal.

(1) Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer.

(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system that complies with 902 KAR 10:085.

(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. This drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment for the breeding of insects.

(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable, to a system approved by the cabinet.

Section 6. Facility Design and Construction.

(1) All public swimming and bathing facilities, and attendant structures, such as bathhouses, dressing rooms, or restrooms, except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.

(2) Depth markings and lane lines.

(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility, if possible, and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:

1. At the points of maximum and minimum depths;

2. At the point of change of slope between deep and shallow portions or transition point;

3. At intermediate two (2) feet increments of water depth; and

4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.

(b) Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet as measured peripherally.

(c) Depth markers shall be in Arabic numerals at least four (4) inches high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be plainly visible to persons in the facility.

(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.

(3) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet) except when the pool is being used for organized activities or during operation as a wave pool. The line shall be placed one (1) foot toward the shallow end from where the break occurs.

(4) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(5) All facilities shall provide an emergency automatic pump shut off located adjacent to the telephone.

Section 7. Facility Water Treatment Systems.

(1)

(a) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities, except bathing beaches.

(b) All system components, including piping, shall bear the NSF International (NSF) potable water (NSF-pw) mark.

(c) Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.

(2) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control and a flow meter shall be provided in the recirculation pump discharge piping.

(b) The turnover rate shall be:

Type of Facility	Turnover Required
Diving pools	8 hours or less
Wading pools, Spas, Therapy pools, Splash pad holding tanks, Facility equipped with a spray feature not providing additional filtered and disinfected water to the spray feature	30 minutes or less
Wave pools, Lazy rivers, Water rides	2 hours or less
Vortex pools, Plunge pools	1 hour or less
All other pools	6 hours or less

(c) **All pool equipment systems shall be certified to NSF or American National Standards Institute (ANSI) 50 standards by an ANSI accredited certification body.**

(d) Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.

(e)(d) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.

(f)(e) The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;
2. Seventy (70) feet for pressure sand or cartridge filters; or
3. Eighty (80) feet for pressure diatomaceous earth filters and perlite filters.

(g)(f) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(h)(g) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(i)(h) A compound vacuum-pressure gauge or vacuum gauge shall be installed on the suction side of the pump.

(j)(i) A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(k)(j) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(l)(k) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.

(3) Water heaters shall be installed at all indoor swimming and bathing facilities, and shall comply with the following:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

(d) An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to swimming and diving pools and in excess of 104 degrees Fahrenheit for spas shall be provided and shall be accessible only to the facility operator;

(e) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code;

(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between

seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code;

(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and

(j) All heaters shall meet the latest standards of applicable recognized testing agencies.

(4) A flow meter shall be:

(a) Located so that the rate of recirculation may be easily read;

(b) Installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence, except for those specifically designed without separation parameters; and

(c) Installed on each recirculation system, splash pad feature, waterslide, any other type of spray feature, and on multiple filtration units, except at government-owned, non-recirculating splash pads.

(5) Vacuum cleaning system.

(a) A vacuum cleaning system shall be:

1. Provided for all facilities except beaches; and
2. Capable of reaching all parts of the facility bottom.

(b) A vacuum system that utilizes the attachment of a vacuum hose to the suction piping through the skimmer may be provided.

(c)

1. If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting shall be provided:

- a. Eight (8) to twelve (12) inches below the normal water level; and

- b. With a cap or plug that is not removable by bathers.

2. Piping from this connection shall be:

a. To the suction side of the pump ahead of the hair and lint strainer;

- b. At least one and one-half (1.5) inches in diameter; and

c. Equipped with a control valve near the junction with the pump suction line.

3. The size of the vacuum hose shall be at least one and one-half (1.5) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning.

(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom.

(e) Vacuum systems shall only be used when the facility is closed to bathers.

(6) Piping, skimmer, and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.

(b) All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.

(c) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping and ten (10) feet per second in pressure piping.

(d) Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.

(e) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;
2. Surge tank drain and overflow lines;
3. Pump discharge to waste lines; and
4. Gutter bypass to waste lines.

(7) Inlets.

(a) Each inlet shall be directionally adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except that facilities equipped with skimmers shall have a velocity of flow in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform

disinfectant residual throughout the entire facility without the existence of dead spots.

(d) Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat.

(e) Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.

(f) Inlets shall be placed completely around the pool, **with no reduction in loop pipe sizing** with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool.

(g) The number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15). Any fraction thereof would represent one (1) additional inlet.

(h) Pools greater than forty-five (45) feet wide shall be equipped with floor inlets in a grid pattern located no more than seven and five-tenths (7.5) feet from a wall and no more than fifteen (15) feet apart. The grid shall form a continuous loop with no reduction in loop pipe sizing.

(i) A minimum of two (2) inlets is required on all pools, holding tanks, and bathing facilities, regardless of size.

(j) At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.

(k) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.

(8) Outlets.

(a) All facilities, including holding tanks, shall be provided with a minimum of two (2) main outlets at the deepest horizontal point plumbed in parallel to permit the facility to be completely and easily drained.

(b) Openings and grates shall:

1. Conform to 15 U.S.C. 8003;
2. Be covered by a proper grating that is not removable by bathers;
3. Be at least four (4) times the area of the main outlet pipe;
4. Have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1.5) feet per second at maximum flow; and
5. Have a maximum grate opening width of one-fourth (1/4) inch.

(c) Additional outlets shall be provided in all facilities where the width of the facility is more than sixty (60) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series.

(d) A hydrostatic relief valve may be provided for in-ground swimming and diving pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer.

(e) Main outlet piping shall be sized for water removal at a rate of at least 100 percent of the design recirculation flow rate and at velocities specified in subsection (6)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(9) Perimeter overflow systems.

(a) Swimming and bathing facilities with a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system.

(b) A perimeter overflow system shall:

1. Extend completely around the facility;
2. Permit inspection, cleaning, and repair;
3. Be designed so that no ponding or retention of water occurs within any portion of the system;
4. Be designed to prevent entrapment of bathers or the passage of small children into an enclosed chamber;
5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;
6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;
7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate;
8. Discharge to the recirculation system;
9. Be provided with a minimum of two (2) outlet pipes that will not allow the overflow channel to become flooded when the facility is in normal use;

10. Require additional outlet pipes provided at one (1) per 150 lineal feet of perimeter overflow system or fraction thereof; and

11. Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.

(10) All facilities that have perimeter overflow systems shall have a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, surge tank, or a combination of these. Main drain piping shall terminate eighteen (18) inches above the surge tank floor and be equipped with a modulating valve and a positive shutoff valve. Surge capacity for a diatomaceous earth (DE) filter is measured eighteen (18) inches above the filter media and the bottom of the gutter pipe.

(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:

(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof with a minimum of two (2) skimmers provided, except for spas, holding tanks, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.

(b) Skimmers shall be located to minimize interference with each other.

(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate.

(d) Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow.

(e) Each skimmer shall be provided with an equalizer line at least one and one-half (1.5) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve and cover that conforms to 15 U.S.C. 8003.

(f) All overflow water shall pass through a basket that can be removed without the use of tools.

(g) All pools not equipped with a perimeter overflow system shall have a smoothly contoured handhold coping not over two and one-half (2.5) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.

(12) All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:

(a) Discharge through an air gap of at least six (6) inches to a surge tank or a vacuum filter tank. If make-up water is added directly to the facility, the fill-spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and

(b) Through piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.

(13) Filtration.

(a) Filters shall comply with the following:

1. Pressure filters shall have:

- a. Pressure gauges;
- b. An observable free fall, or a sight glass installed on the backwash discharge line; and
- c. A manual air-relief valve at the high point;
2. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;
3. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and
4. Filter media shall be listed as NSF approved.

(b) Each facility shall have separate filtration and treatment systems.

(c) Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day, except if the facility is closed for repairs or at the end of the swimming season.

(d) Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.

(e) At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.

(f) The filter system shall be designed with necessary valves and piping to permit filtering to the pool.

(g) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(h) Diatomaceous earth filters shall comply with the following requirements:

1. The design filtration rate shall not exceed one and one-half (1.5) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoat;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1.5) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water;

5. All filters shall be equipped for cleaning by one (1) or more of the following methods:

- a. Backwashing;
- b. Air-pump assist backwashing;
- c. Spray wash;
- d. Water pressure to wash vacuum filter; or
- e. Agitation; and

6. Perlite may be used in filters listed by NSF for perlite, but it may not be substituted for diatomaceous earth without NSF listing.

(i) Vacuum sand filters shall comply with the following requirements:

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute, whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(j) Cartridge filters shall comply with the following requirements:

1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;

2. Cartridge filters shall only be used on indoor pools;

3. The design filtration rate shall not exceed fifteen hundredths (0.15) gallons per minute per square foot of filter surface area; and

4. A clean duplicate set of cartridges shall be maintained at the facility.

(14) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control.

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of:

- a. Eight (8) ppm or two and seven-tenths (2.7) pounds per day chlorine gas or its equivalent for each 10,000 gallons of pool volume for outdoor facilities; or

- b. Three (3) ppm or one (1) pound per day for chlorine gas or its equivalent for each 10,000 gallons of pool volume for indoor facilities based on the turnover rates specified in subsection (2)(b) of this section.

2. The equipment for supplying chlorine shall not be controlled by a day-date clock.

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter unless the chlorine injection point is located within the surge tank.

4. Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.50) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment.

5. Supplemental NSF listed ultraviolet (UV) light disinfection systems:

- a. Shall be provided on all splash pads with a recirculating water system;

- b. Shall be installed on a bypass line; and

- c. Shall be equipped with a flow indicator; and

- d. May be used on other facilities as supplemental disinfection.

6. Ozone may be used as a supplement to chlorination or bromination. Ozonation equipment will be considered by the cabinet on a case-by-case basis.

7. No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than five hundredths (.05) ppm at all times either in the vicinity of the ozonator or at the pool water surface.

(c) If positive displacement pumps, or hypochlorinators, are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) Gas chlorinators shall only be used in a pre-existing facility and shall comply with applicable sections of 29 C.F.R. 1910.119.

(e) pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.

Section 8. Operational Water Quality Standards. Operational water quality shall comply with 902 KAR 10:120.

Section 9. Equipment Rooms. Equipment rooms shall comply with the following requirements:

- (1) Equipment necessary for facility operation shall be housed in a lighted, ventilated room that affords protection from the weather, prevents unauthorized access, has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection.

- (2) The equipment room floor shall slope toward drains and shall have a nonslip finish.

- (3) A hose bib with a vacuum breaker shall be installed in the equipment room.

- (4) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access.

- (5) The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

Section 10. Telephones.

- (1) All facilities shall have a non-pay landline telephone, or Voice over Internet Protocol (VoIP) telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard located on the deck that is readily accessible and conspicuously located. A cordless telephone shall be prohibited.

- (2) All facilities utilizing VoIP telephones shall only use fixed VoIP services.

- (3) Instructions for dialing shall be posted if necessary.

(4) The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

Section 11. Existing Facilities and Equipment.

(1) Existing facilities and equipment being used prior to the effective date of this administrative regulation that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

- (a) Are in good repair;
- (b) Are capable of being maintained in a sanitary condition;
- (c) Meet facility water quality standards; and
- (d) Create no health or safety hazard.

(2) If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.

Section 12. Effect on Local Administrative Regulations. Compliance with this administrative regulation shall not relieve any person from compliance with any other state or local laws dealing with pool operation and maintenance matters or zoning requirements that may also be applicable.

Section 13. Variances for Construction Requirements.

(1) All facilities shall be constructed or remodeled in compliance with the provisions of this administrative regulation, except that an applicant may request a variance if the cabinet determines that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require proof from the applicant documenting that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 12, 2024

FILED WITH LRC: November 13, 2024 at 3:30 p.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the uniform design and construction standards for public swimming and bathing facilities, including splash pads and spas. The amended after comments version of this administrative regulation clarifies when an engineer or architect seal is required on plan submission, allows for equipment to meet either NSF or American National Standards Institute standards, and adds the requirement that the inlet piping system not have a reduction in the loop pipe sizing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all public swimming and bathing facilities are designed and constructed in a manner that protects public health.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure all public swimming and bathing facilities, including splash pad and spas, are designed, constructed and installed in a manner that protects public health.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The department receives between 115 and 120 construction plans per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will need to be aware of the design, construction, and inspection requirements contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All public swimming and bathing facilities will be designed and constructed in a manner that protects public health while also providing opportunities for the general public to enjoy the facilities.

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

(a) Initially: This is an ongoing program, there are no initial cost.

(b) On a continuing basis: This is an ongoing program, the costs associated with this administrative regulation will be absorbed by current program funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund dollars and revenue received from the permitting and inspection fees are the sources of funding to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation proposes to increase the current fee structure for the construction permit and inspection by ten (10) percent.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The fees established in this new administrative regulation are not new fees. The existing fee structure is in 902 KAR 10:121 and that administrative regulation will be repealed with the filing of this new administrative regulation. This new administrative regulation proposes to increase the plan review and construction inspection fees by ten (10) percent.

(9) TIERING: Is tiering applied? Tiering is not applied. All public swimming and bathing facilities, including splash pads operated by a local government, require plan review approval before beginning construction.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.180.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety is the promulgating agency. The Division of Plumbing, Department of Housing, Building and Construction in the Public

Protection Cabinet and the Divisions of Water and Waste Management in the Energy and Environment Cabinet will also be affected by this new administrative regulation. The Department of Parks in the Tourism, Arts and Heritage Cabinet will also be affected by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: The costs associated with administering the plan review and construction inspection program is between \$335,000 to \$340,000.

Revenues: The department receives approximately \$48,000 in revenue from the plan review and construction inspection fees.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This new administrative regulation affects local health departments and local governments that have a public swimming and bathing facility.

(a) Estimate the following for the first year:

Expenditures: may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. The revenues received will not change in subsequent years without an amendment to this administrative regulation.

Revenues: This administrative regulation does not generate revenue for the affected local entities.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The impact in expenditures, revenue and cost savings in subsequent years cannot be determined.

(4) Identify additional regulated entities not listed in questions (2) or (3): This new administrative regulation affects newly constructed hotels that have a swimming pool or spa/hot tub and existing hotels that seek to remodel the swimming pool or spa/hot tub, health facilities and athletic clubs, schools including colleges and universities, swim clubs and country clubs, youth camps, and any other entity that provides a public swimming and bathing facility.

(a) Estimate the following for the first year:

Expenditures: Expenditures for local health departments will be minimal. Local health departments receive the initial construction plans but forward those, along with the required fee, to the state. Local governments will have expenditures related to the facility design, plan development, and construction cost. This cost can range from \$50,000 to \$100,000 or more.

Revenues: This administrative regulation does not generate revenue for the additional regulated entities.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The fee structure in this administrative regulation will not change in subsequent years without amending the administrative regulation. The expenditures for the additional regulated entities may change depending on the cost associated with the facility design, plan development and construction cost. That total cannot be determined at this time.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation will have minimal fiscal impact for the regulated entities. The Department for Public Health receives approximately \$48,000 per year in revenue from the fees associated with the plan review and construction inspection activities. However, the departments expenditures are between \$335,000 to \$340,000 per year.

(b) Methodology and resources used to determine the fiscal impact: A financial report of revenue for the associated cost center and the salary report were used to determine the revenue and expenditures for this administrative regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This

administrative regulation will not have an overall negative or adverse major economic impact for the entities identified in questions (2) – (4).

(b) The methodology and resources used to reach this conclusion: The revenue received from the regulated entities in the form of fees is less than \$50,000 per year. The expenditures for the department are less than \$350,000 per year.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 29 C.F.R. 1910.119 Occupational Safety and Health Administration regarding the storage of hazardous materials, and 15 U.S.C. 8003- Federal swimming pool and spa drain cover standards.

(2) State compliance standards. KRS 211.180 authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the regulation and control of the matters set out below and shall formulate, promote, establish, and execute policies, plans, and comprehensive programs relating to all matters of public health, including the sanitation of public and semipublic recreational areas.

(3) Minimum or uniform standards contained in the federal mandate. 29 C.F.R. 1910.119 contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. These releases may result in toxic, fire or explosion hazards. The federal swimming pool and spa drain cover standards under 15 U.S.C. 8003 requires that effective December 19, 2007, all pools and spas manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard; each public pool and spa in the United States shall be equipped with anti-entrapment devices or systems that comply with the ASME/ANSI A112.19.8 performance standard, or any successor standard.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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

902 KAR 10:125. Kentucky public swimming and bathing facility safety requirements.

RELATES TO: KRS 211.015, 211.205

STATUTORY AUTHORITY: KRS 194A.050, 211.180, 2024 Ky Acts ch. 116

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform safety standards for public swimming pools and bathing facilities.

Section 1. Definitions.

(1) "Bather" means a person using a public swimming and bathing facility.

(2) "Bather load" means all bathers within the public swimming and bathing facility enclosure.

(3) "Cabinet" is defined by KRS 211.015(1)(a).

(4) "Class A" is defined by 2024 Ky Acts ch. 116 Section 1(1)(a).

(5) "Class B" is defined by 2024 Ky Acts ch. 116 Section 1(1)(b).

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(6) "Play feature" means a structure or feature that is added to a pool for the purpose of entertainment.

(7) "Public swimming and bathing facility" or "facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing, except for a pool at a private single-family residence intended only for the use of the occupant[owner] and guests.

(8) "Public swimming and bathing facility enclosure" means an enclosure that surrounds and secures the public swimming and bathing facility that includes decking and pool.

(9) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(10) "Splash pad" means a public swimming and bathing facility that:

(a) Has aquatic play features that spray or drop water for the purpose of wetting people;

(b) Is designed so that there is no accumulation or ponding of water on the ground;

(c) Includes both recirculating and non-recirculating water systems; and

(d) Includes splash pads operated by local governments as defined in KRS 211.205.

(11) "Third-party compliance specialist" means a person who is a representative of an incorporated organization that provides lifeguard training and pool safety analysis and is not a representative of state and local governments nor is an associate of the establishment seeking use of an alternative lifeguard plan.

Section 2. Lifeguards.

(1) Class A and Class B pools that meet the criteria specified in 2024 Ky Acts ch. 116 Section 1(2) shall have lifeguards on duty at a rate of one (1) per 100 bathers.

(2) All Class A pools over 2,000 square feet shall have a minimum of one (1) lifeguard on duty at all times the pool is open to bathers.

(3) Additional lifeguards shall be provided at a rate of:

(a) One per 2,000 square feet or major fraction more than half thereof according to the following table:

Water Surface Square Footage	Number of Lifeguards Required
2,000-3,000	1 lifeguard required
3,001-5,000	2 lifeguards required
5,001-7,000	3 lifeguards required
7,001-9,000	4 lifeguards required
9,001-11,000	5 lifeguards required
11,001 and above	6 lifeguards required plus one additional lifeguard for each additional 2,000 square feet over 11,000 square feet;

or

(b) One (1) per 100 bathers according to the following table:

Number of Bathers	Number of Lifeguards Required
1-100	1 lifeguard required
101-200	2 lifeguards required
201-300	3 lifeguards required
301-400	4 lifeguards required
401-500	5 lifeguards required
501-600	6 lifeguards required
601 and above	7 lifeguards required plus one additional lifeguard for each additional 100 bathers.

(4) All Class A and B pools using number of bathers for the lifeguard application rate shall:

(a) Establish a method for tracking bathers entering the facility;

(b) Continuously monitor fluctuating bather load and staff lifeguards accordingly; and

(c) Upon inspection, provide accurate bather load logs to the cabinet.

(5) In accordance with 2024 Ky Acts ch. 116 Section 1(4), a swimming coach or instructor may count as a required lifeguard. The swimming coach or instructor shall comply with the requirements of subsection (10)(a) of this section when acting as a required lifeguard.

(6) All facilities that are not required to provide lifeguards shall post and enforce the following rules at all entrance points: "No Lifeguard on Duty" and "No person may enter the facility area alone or swim alone."

(7) In accordance with 2024 Ky Acts ch. 116 Section 1(2), at all times when a lifeguard is not on duty, features such as induced waves, slides, diving boards, platforms, climbing walls, or other similar features shall not be used. These features shall be either roped off or otherwise blocked for usage, and signage shall clearly indicate that the features may not be used.

(8) Splash pads shall not be required to provide lifeguards.

(9) A facility may submit an alternative lifeguard staffing plan that:

(a) Has been certified by an independent third-party compliance specialist who witnessed the initial testing to ensure the plan is sufficient to protect patrons;

(b) Designates the number of lifeguards necessary to ensure each lifeguard is capable of viewing the entire area of the assigned zone of patron surveillance;

(c) Ensures the lifeguard is able to reach the farthest extent of the assigned zone of patron surveillance within twenty (20) seconds; and

(d) Includes the following:

1. A description of study methods and calculations used to determine lifeguard zones and placement;

2. Methods and frequency of testing that will be performed to ensure the plan protects patrons;

3. A complete layout of the pool surface diagrammed with lifeguard placement and assigned zone of surveillance; and

4. A minimum baseline of lifeguards required for safe operation;

(e) The alternative lifeguard staffing plan shall be:

1. On file with the Public Safety Branch within the Department for Public Health;

2. Submitted to the local health department of jurisdiction; and

3. Resubmitted if there is a change in:

a. The shape or size of the swimming pool;

b. The surrounding areas that would obstruct the lifeguard's view of the bottom of the pool; or

c. Ownership of the facility.

(10) Lifeguards shall comply with the following:

(a) Lifeguards, including coaches or instructors serving as lifeguards as described in 2024 Ky Acts ch. 116 Section 1(1)(4), shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor shall be an American Red Cross or equivalent training and include an in-water training component. The certificate of competency shall be onsite and available for inspection upon request;

(b) Lifeguards shall be dressed in swimming attire; and

(c) Lifeguards assigned to the supervision of the facility shall not be subject to duties that would:

1. Distract their attention from proper observation of persons in the facility area; or

2. Prevent immediate assistance to persons in distress in the water.

Section 3. Safety Equipment.

(1) One (1) unit consisting of the following lifesaving equipment shall be provided for 2,000 square feet of water surface area and an additional unit for each additional 2,000 square feet or major fraction more than half thereof:

(a) A U.S. Coast Guard approved ring buoy no more than twenty (20) inches in diameter with a three-sixteenths (3/16) inch rope attached that measures one and one-half (1 1/2) times the maximum pool width;

(b) Rescue tubes may be used when lifeguards are present;

(c) A shepherd's hook securely attached to a one (1) piece pole not less than twelve (12) feet in length; and

(2) One (1) backboard with head immobilizer and at least three (3) straps for back and neck injuries shall be provided per facility.

(3) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use. Additional units shall be provided for each

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additional 2,000 square feet of facility area or major fraction more than half thereof.

(4) Spas with less than 144 square feet of water surface areas shall be exempt from the requirements of subsection (1) and (2) of this section.

(5) Splash pads shall be exempt from the requirements of subsection (1) through (3) of this section.

(6) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove this equipment from its established location.

(7) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(8) All facilities shall provide an emergency automatic pump shut off readily accessible by facility staff.

Section 4. Emergency Telephones.

(1) All facilities shall have a non-pay landline or Voice over Internet Protocol (VoIP) telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard, and located on the deck in a conspicuous, readily accessible location. A cordless telephone shall be prohibited. Instructions for dialing shall be posted if necessary.

(2) All facilities utilizing VoIP telephones shall only use fixed VoIP services. Non-fixed VoIP services shall be prohibited.

(3) The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

Section 5. Reporting Requirements. All drownings, near drownings, and injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health on form "DFS-354, Kentucky Public Swimming and Bathing Facilities Drowning and Injury Report".

Section 6. Existing Facilities and Equipment. Existing facilities and equipment being used prior to the effective date of this administrative regulation that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

- (1) Are in good repair;
- (2) Are capable of being maintained in a sanitary condition; and
- (3) Create no health or safety hazard.

Section 7. Variances.

(1) A facility submitting an alternative lifeguard staffing plan pursuant to Section 2(7) of this administrative regulation may submit a request for a variance to the safety equipment requirements of this section to the Environmental Management Branch in the Department for Public Health.

(2) The variance requested shall not affect the safe and healthful operation of the facility.

(3) Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of this section and that no safety or health hazard would be created if the variance is granted.

Section 8. Incorporated by Reference.

(1) The "DFS-354, Kentucky Public Swimming and Bathing Facilities Drowning and Injury Report", 3/2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 12, 2024

FILED WITH LRC: November 13, 2024 at 3:30 p.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax: 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the safety requirements for public swimming and bathing facilities. The amended after comments version clarifies the applicability of the requirements for public swimming pools, and updates language regarding location of the telephone for consistency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all public swimming and bathing facilities operate in a safe and sanitary manner to reduce the incidence of recreational water related illnesses and injuries. According to the Centers for Disease Control and Prevention (CDC): "Water-based physical activity, such as swimming, improves physical and mental health throughout life; however, it can put people at risk for recreational water-associated illness and injury. A recreational water illness outbreak is the occurrence of similar illnesses in 2 or more persons, epidemiologically linked by location and time of exposure to recreational water. For 1978–2012, 879 recreational water illness outbreaks have been reported CDC, and the number reported annually has increased significantly in recent years, especially the number of outbreaks associated with treated recreational water venues (e.g., pools and hot tubs/spas) reported annually". Fatal drownings are the leading cause of injury death for US children ages 1 to 4, and the third leading cause of unintentional injury death for US youth ages 5 to 19 (American Academy of Pediatrics). Not all drownings are considered "fatal" drownings; non-fatal drownings can have long term physical and mental health consequences. According to a 1998 report by the CDC on lifeguard effectiveness: "Most drownings are preventable through a variety of strategies, one of which is to provide lifeguards in public areas where people are known to swim and to encourage people to swim in those protected areas. Some estimates indicate that the chance of drowning at a beach protected by lifeguards can be less than one in 18 million. There is no doubt that trained, professional lifeguards have had a positive effect on drowning prevention in the United States."

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure public swimming and bathing facilities operate in a safe and sanitary manner to protect the public health.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 2,252 public swimming pools, bathing facilities, and spas regulated by the department.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All facility owners and operators will need to be aware of the safety requirements, including staffing requirements, and ensure their facilities are in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be minimal cost to facilities to comply with the safety requirements of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Facilities operating in compliance with this administrative regulation will protect the health and safety of those who swim at the facility.

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

(a) Initially: This is an ongoing program, there are no initial cost.

(b) On a continuing basis: The cost to the Department for Public Health associated with administering the public swimming pool permitting and inspection program is \$2,376,885. This is a combined state and local health department total.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund dollars, permit and inspection fees are the sources of funding for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. While some Class A and Class B pools may not be required to provide lifeguards, the required safety rules apply equally to all regulated swimming and bathing facilities.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.180.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Department for Public Health, Division of Public Health Protection and Safety is the promulgating agency. This administrative regulation also affects Kentucky state parks that operate public swimming and bathing facilities.

(a) Estimate the following for the first year:

Expenditures: The cost to the Department for Public Health associated with administering the permitting and inspection program is \$2,376,885. This is a combined total for state and local health departments. Expenditures for Kentucky state parks include the cost associated with maintaining their facilities in compliance with this administrative regulation and associated staffing cost.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation affects local health departments who inspect the permitted facilities for compliance with the safety requirements of this administrative regulation. This administrative regulation also affects local governments that have public swimming and bathing facilities.

(a) Estimate the following for the first year:

Expenditures: for the Department for Public Health may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. Expenditures for Kentucky state parks will be impacted by changes in maintenance cost and associated staffing cost. These totals cannot be determined at this time.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures for local health departments may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. Expenditures to Kentucky state parks may be impacted by changes in the costs associated with facility maintenance as well as changes in associated staff cost.

(4) Identify additional regulated entities not listed in questions (2) or (3): Additional regulated entities include hotels, recreational facilities, such as water parks, health facilities and athletic clubs, schools including colleges and universities, swim clubs and country clubs, youth camps, and any other entity that provides a public swimming and bathing facility.

(a) Estimate the following for the first year:

Expenditures: The costs associated with administering the permitting and inspection program is \$2,376,885. This is a combined total for state and local health departments. Expenditures for local governments will include the cost associated with maintaining the public swimming and bathing facility and associated staffing costs.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures to the additional regulated entities may be impacted by changes in the costs associated with facility maintenance as well as changes in associated staff cost.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not add any additional requirements to the regulated entities. Permitted facilities may incur costs associated with facility maintenance as well as associated staffing cost. Those figures cannot be determined at this time.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation does not generate revenue. Expenditures for each facility will be dependent on the size of the facility and the facility staffing pattern. A facility that employs lifeguards will incur the cost associated with staffing the facility. All facilities will incur cost associated with maintaining the facility for compliance with this administrative regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: The costs associated with this administrative regulation are shared costs between local health departments and the cabinet. This administrative regulation does not generate revenue. The administrative costs to local health departments and the cabinet are approximately \$150 per hour for the environmental health inspectors of swimming and bathing facilities. This cost includes the salary of the inspector, Kentucky Employee Retirement System (KERS) contributions, Federal Insurance Contributions Act (FICA) contributions, and health and life insurance cost. The total costs across all local health departments and the state are approximately \$2,376,885 per year.

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

902 KAR 10:127. Kentucky public beach requirements.

RELATES TO: KRS 211.015, 211.090, 211.210, 211.220, 211.990(2)

STATUTORY AUTHORITY: KRS 194A.050, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform requirements for public swimming and bathing beaches.

Section 1. Definitions.

- (1) "Approved" means that which is acceptable to the cabinet.
- (2) "Bather" means a person using a public beach.
- (3) "Cabinet" is defined by KRS 211.015(a).
- (4) "Facility" means a public beach as defined in subsection (6) of this section.
- (5) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.
- (6) "Public beach" means a natural body of water that is modified or improved for the purpose of swimming or bathing.
- (7) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.
- (8) "State Plumbing Code" means the requirements established in 815 KAR Chapter 20.A
- (9) "Turbidity" means the state or quality of being clouded or opaque with suspended matter.

Section 2. Submission of Plans and Specifications for Approval.

- (1) A person shall not construct, alter, or reconstruct a public beach until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.
- (2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to Section (3) of this administrative regulation.
- (3) The front page of the plans submitted for review and approval shall contain the:
 - (a) Name of the public beach;
 - (b) Location by city and county;
 - (c) Name and contact information for the facility owner;
 - (d) Name of the installer; and
 - (e) Name of the engineer, architect, or person preparing the plans.
- (4) Plans shall be submitted by an engineer or architect licensed in the state of Kentucky and bear the individual's official seal.
- (5) The plans shall be:
 - (a) Drawn to scale;
 - (b) Accompanied by proper specifications to permit a comprehensive review of the plans; and
 - (c) Include:
 1. A site plan of the general area with a sectional view of the facility complex with all necessary dimensions;
 2. A diagram showing all appurtenances in sufficient detail, as well as pertinent elevation data, water depths and slope of the beach below the water line;
 3. Indication of the placement of sand or gravel for the beach area; and
 4. The fees required by Section 3 of this administrative regulation.
- (6) One (1) set of approved plans shall be kept at the job site and available for inspection.

(7) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the public beach area and the watershed.

(8) Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.

(9) The facility shall not be used before receiving a final inspection and written approval from the cabinet.

(10) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(11) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet.

Section 3. Plan Review and Construction Inspection Fees.

- (1) A fee shall be required for all plan reviews and construction inspections by the cabinet or the local health department.
- (2) The fee for plan review shall be calculated as follows:
 - (a) Public beach plan review, the fee shall be \$346.50; and
 - (b) Include \$82.50 for interactive water features or inflatable water features.
- (3) The fee for public beach construction inspection shall be calculated as follows:
 - (a) Pre-construction survey or pre-renovation evaluation, the fee shall be \$231.
 - (b) Rough-in construction inspection, the fee shall be \$115.50.
 - (c) Final construction inspection, the fee shall be \$173.25.

Section 4. Permit and Inspection Fees.

- (1) An annual permit fee of \$110 for all public beaches shall be:
 - (a) Paid no later than May 1 each year; and
 - (b) Paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.
- (2) Permits shall be nontransferable from one (1) person to another.
- (3) Fees for Inspections.
 - (a) For all public beaches, the annual inspection fee shall be:
 1. Assessed according to the linear footage of beach front;
 2. Calculated as established in this paragraph:
 - a. 149 or less linear feet, the fee shall be ninety-nine (99) dollars;
 - b. 150 to 200 linear feet, the fee shall be \$192.50; and
 - c. 201 and above, the fee shall be \$192.50 plus fifty-five (55) dollars for each additional fifty (50) linear feet; and
 - (b) Include \$82.50 for interactive or inflatable water features.
 - (4) A late payment fee of fifty-five (55) dollars shall be assessed on all annual permits not received by May 1 each year.
 - (5) The inspection fee required by this section shall be:
 - (a) Paid to the local health department having jurisdiction by check or money order made payable to the Kentucky State Treasurer;
 - (b) Deposited in the environmental fee account; and
 - (c) Sent to the Department for Public Health for deposit with the Kentucky State Treasury.

Section 5. Water Quality and Sanitary Requirements for Public Beaches.

- (1) Physical quality. The following characteristics shall not be present in the beach area or watershed:
 - (a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; or
 - (b) Hazardous substances being discharged into public beach water or watershed.
- (2) **The beach or watershed used for recreational purposes shall not have been used as part of a municipal sewage system, including a sewage overflow reservoir.**
- (3) Bacteriological quality. The bacteriological quality of water at public beaches shall comply with the following criteria:
 - (a) It shall meet the requirements of 401 KAR 10:031. Satisfactory bacteriological results shall be obtained before approval for construction is considered; and

(b) There shall not be any sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the public beach area or immediate watershed.

(4)(3) Chemical quality. There shall not be any discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

Section 6. Water Supplies at Public Beaches.

(1) Potable water from an approved municipal water system or water district shall be supplied to all public beaches. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility.

Section 7. Sewage and Wastewater Disposal.

(1) All sewage and waste water shall be disposed of into a public sewer system if available.

(2) If a public sewer system is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated pursuant to the requirements of the cabinet in 902 KAR 10:085 and the Energy and Environment Cabinet in KAR Title 401;

(3) If a public sewer system subsequently becomes available, connections shall be made to it and the use of the facility's private sewage disposal system shall be discontinued.

Section 8. Refuse Disposal.

(1) All refuse at a public swimming and bathing beach shall be disposed of in a manner approved by the Energy and Environment Cabinet in KAR Title 401.

(2) An adequate number of refuse containers with tight fitting lids shall be provided at readily accessible locations at all public beaches.

(3) Refuse containers in women's restrooms shall be kept covered.

(4) Bulk refuse storage areas shall be designed and maintained to prevent rodent harborage.

(5) Bulk refuse containers shall be:

(a) Of approved design and construction;

(b) Kept closed; and

(c) Placed upon an impervious surface within a suitable enclosure to prevent access by animals.

Section 9. Facility Design and Construction.

(1) Attendant structures, such as bathhouses, dressing rooms, or restrooms, shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.

(2)

(a) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed.

(b) Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet.

(c) Lettering on markers shall be maintained in good repair.

(d) Within these limits of safe swimming there shall not be any boating, underwater obstructions, or other hazards that may be dangerous or cause injury to swimmers.

(e) Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing.

(f) The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.

(3) The water surrounding any floats or inflatable features where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.

Section 10. General Facility Operation and Maintenance.

(1) All facilities shall be maintained in good repair and free of debris.

(2) Bather preparation facilities. Each beach facility shall provide one (1) or more central bath house containing the necessary toilet and other plumbing fixtures as designated below.

(a) Toilet facilities shall be provided for females at a ratio of three (3) for 500 linear feet of beach.

(b) Toilet facilities shall be provided for males at a ratio of one (1) for 500 linear feet of beach.

(c) Urinal facilities shall be provided for males at a ratio of two (2) for 500 linear feet of beach.

(d) Lavatories shall be provided for each sex accommodated at a ratio of two (2) for 500 linear feet of beach.

(e) For each additional 500 linear feet of beach one (1) additional toilet and lavatory shall be provided for female and male restrooms and one (1) additional urinal for male restrooms.

(3) A bath house shall be conveniently located within 500 feet of the beach area to be served.

(4) All plumbing installation shall meet the State Plumbing Code, 815 KAR Chapter 20.

(5) A room containing sanitary facilities shall have:

(a) Every opening to the outer air effectively screened and a self-closing entry door;

(b) Natural or artificial lighting;

(c) Hot and cold or tempered water under pressure furnished at every lavatory and sink; and

(d) Cold water furnished to every toilet and urinal.

(6) Floors, walls, ceilings, attached or freestanding fixtures, and equipment shall be easily cleanable and in good repair. Floors shall be maintained in a nonslip condition.

(7) An adequate supplies of toilet tissue, soap, and disposable hand drying towels or suitable hand drying devices shall be provided and maintained.

(8) Refuse containers shall be placed in all restrooms.

(9) Diving boards or platforms, ladders, hand rails, docks, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(10) Maintenance of bathing beaches.

(a) Beach areas shall be maintained free of litter and water borne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.

(b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas and shall extend beneath the water of all wading and swimming areas.

(c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis and immediately after high water conditions for floating or sunken debris, obstructions at diving areas, and high-water turbidity, which may present safety hazards to bathers.

Section 11. Personnel.

(1) Operator. A facility operator shall be responsible for the operation and maintenance of the facility. The operator shall be available at all times when the facility is open for use.

(2) Lifeguards.

(a) Lifeguards shall be provided at all bathing beaches that allow bathers seventeen (17) years of age or younger without a responsible adult at a rate of one (1) per 100 linear feet of beach front or major fraction more than half thereof. Public beaches that do not provide lifeguards shall post the following warnings: "No lifeguard on duty. Swim at your own risk. No person seventeen (17) years of age or younger may swim without a responsible adult present."

(b) A public beach that has an inflatable water attraction shall have a minimum of one (1) lifeguard per attraction, with additional lifeguards provided to ensure all areas surrounding the attraction are clearly visible at all times.

(3) Lifeguards shall comply with the following:

(a) Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;

(b) Lifeguards shall be dressed in swimming attire; and
(c) Lifeguards assigned to the supervision of the facility shall not be subject to duties that would:

1. Distract their attention from proper observation of persons in the facility area; or
2. Prevent immediate assistance to persons in distress in the water.

Section 12. Safety Equipment.

(1) One (1) unit of life saving equipment consisting of the following shall be provided per facility:

- (a) A U.S. Coast Guard approved ring buoy no more than twenty (20) inches in diameter with a three-sixteenths (3/16) inch rope attached;
- (b) A shepherd's hook securely attached to a one (1) piece pole not less than twelve (12) feet in length;
- (c) One (1) backboard with head immobilizer and at least three (3) straps, for back and neck injuries;
- (d) One (1) lifeboat outfitted to meet state water safety administrative regulations;
- (e) A torpedo shaped buoy; and
- (f) A minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use.

(2) Lifesaving equipment shall be mounted in a conspicuous place at the most centrally located readily accessible location. Its function shall be plainly marked, and this equipment shall be kept in good repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove this equipment from its established location.

(3) Telephones.

(a) All facilities shall have a non-pay landline or Voice over Internet Protocol (VoIP) telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard, and located in a conspicuous, readily accessible location. A cordless telephone shall be prohibited. Instructions for dialing shall be posted if necessary.

(b) A two (2) way radio communication system to a manned telephone system may be substituted at an isolated beach facility.

(c) All facilities utilizing VoIP telephones shall only use fixed VoIP services. Non-fixed VoIP services shall be prohibited.

(d) The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

(4) All drownings, near drownings, and injuries requiring hospitalization shall be immediately reported by next business day to the local health department and the Department for Public Health on form DFS-354, Kentucky Public Swimming and Bathing Facilities Drowning and Injury Report, incorporated by reference in 902 KAR 10:125.

Section 13. Spectator and Bather Administrative Regulations.

(1) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility shall be refused to a person:

1. Having any contagious disease or infectious conditions, such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;
2. Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and
3. Under the influence of alcohol, illegal substances, or exhibiting erratic behavior;

(b) Food, drink, gum, tobacco, or vapor producing products shall not be allowed, other than in specially designated and controlled sections of the facility area;

(c) Glass, soap, or other material that creates hazardous conditions shall not be permitted in the beach area or in the water;

(d) Beverage containers of glass or metal containers with detachable pull tabs shall not be permitted in the beach area or in the water;

(e) Diving in areas other than designated diving areas shall not be permitted; and

(f) Caution shall be exercised in the use of diving boards, floating platforms and inflatable attractions.

Section 14. Facility Inspection.

(1) Inspections.

(a) All owners or operators, prior to opening to the public, shall certify to the cabinet in writing, that the facility is in compliance with the requirements of this administrative regulation, except in instances where the cabinet has made an inspection prior to its opening. The cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet may require one (1) of the full facility inspections to be performed prior to a facility's opening.

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(3) The cabinet may make as many additional inspections and reinspections as necessary for the enforcement of this administrative regulation.

(4) When an agent of the cabinet makes an inspection of a public swimming and bathing facility, the findings shall be recorded on the DFS-350, Public Beaches Inspection Report, and a copy provided to the facility owner or operator. The inspection report shall:

(a) Set forth any violation observed;

(b) Establish a specific and reasonable period of time for the correction of the violation observed; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 15. Water Sampling and Testing.

(1) Beaches shall comply with the requirements of Section 5 of this administrative regulation prior to opening for the season and during the operating season.

(2) Beaches shall be monitored once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation, bacteriological water sampling, and safety checks as necessary. Results shall be made available to the cabinet upon inspection.

(3) Additional samples may be requested to ensure compliance with this administrative regulation.

Section 16. Conditions requiring Closure of a Facility and Enforcement Provisions.

(1) The cabinet shall immediately order the closure of a facility and prohibit any person from using the facility by written notice to the facility owner or operator if:

(a) There is an immediate danger to health or safety;

(b) The water does not conform to the bacteriological standards contained in this administrative regulation;

(c) An environmental survey of the area shows evidence of sewage, other pollutants, or toxic materials being discharged to waters tributary to a beach;

(d) The owner, operator, an employee, or representative of the owner interferes with duly authorized agents of the cabinet who bear proper identification, in the performance of their duties;

(e) If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the facility, and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

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(3) Any owner or operator affected by an order may request an administrative conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

(5) If a source of sewage, pollution, or toxic material discovered as a result of an environmental survey is eliminated, the cabinet may authorize the reopening of a beach.

(6) In all other instances of a violation of the provisions of this administrative regulation, or for the nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation in question and afford a reasonable opportunity to correct the violation. An owner or operator who fails to comply with any written notice issued under the provisions of this administrative regulation shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of the notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet by the owner or operator within the ten (10) day period.

(7) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(8) Any person whose facility has been closed may, at any time, make application for a reinspection for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

(9)

(a) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400.

(b) Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator, within the ten (10) day period.

Section 17. Existing Facilities and Equipment. Existing facilities and equipment being used prior to the effective date of this administrative regulation that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

- (1) Are in good repair;
- (2) Are capable of being maintained in a sanitary condition;
- (3) Meet facility water quality standards; and
- (4) Create no health or safety hazard.

Section 18. Effect on Local Administrative Regulations. Compliance with this administrative regulation shall not relieve any person from compliance with any other state or local laws dealing with beach operation and maintenance matters or zoning requirements that may also be applicable.

Section 19. Variances for Construction Requirements.

(1) All facilities shall be constructed or remodeled in compliance with the provisions of this administrative regulation, except that an applicant may request a variance if the cabinet determines that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require proof from the applicant documenting that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.

Section 20. Incorporated by Reference.

(1) The "DFS-350 Public Beach Inspection Report", 3/2024, is incorporated by reference:

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 12, 2024

FILED WITH LRC: November 13, 2024 at 3:30 p.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the uniform standards for Kentucky public swimming and bathing beaches. The amended after comments version of this administrative regulation adds the prohibition to utilize a municipal sewage system, including a sewage system overflow reservoir, as a public swimming or bathing beach or watershed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all public swimming and bathing beaches operate in a safe and sanitary manner to reduce the incidence of recreational water related illnesses and outbreaks and protect the environment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure public swimming and bathing beaches are designed and operated in a safe and sanitary manner, ensure the water quality standard of these facilities to control for contamination, and ensure sufficient safety and rescue equipment is available.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently thirty-four (34) permitted public bathing beaches.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Current permitted bathing beaches will need to be aware of the required safety equipment requirements and ensure all equipment is fully operational. All new permits for

construction of a public swimming and bathing beach will need to ensure they meet all water quality and sanitary requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no increased cost for compliance with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Bathing beaches will operate in a safe and sanitary manner.

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

(a) Initially: This is an ongoing program, there are no additional cost.

(b) On a continuing basis: This is an ongoing program, the costs associated with this administrative regulation will be absorbed by current program funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded by a mix of state general fund dollars and fees collected for plan review and inspection activities.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The fees established in this administrative regulation are not new fees. The existing permit and inspection fees are in 902 KAR 10:121. That administrative regulation will be repealed and the fees for the permit and inspection of bathing beaches added to this new administrative regulation. The current fees will be increased by ten (10) percent.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements for public swimming and bathing beaches are applied equally to all facilities.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.180.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Department for Public Health, Division of Public Health Protection and Safety is the promulgating agency. This administrative regulation also affects state parks that operate bathing beaches.

(a) Estimate the following for the first year:

Expenditures: The cost to the Department for Public Health associated with administering the permitting and inspection program is \$2,376,885. Expenditures for Kentucky state parks include the annual permit fee of \$110 and the required inspection fee which ranges between ninety-nine (99) dollars and \$247.50.

Revenues: The potential revenue for the Department for Public Health is \$10,120. This is a combined total for both state and local health departments. The department is unable to determine the revenue for the impacted Kentucky state parks.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation affects local health departments who inspect the permitted bathing beaches.

(a) Estimate the following for the first year:

Expenditures: for the Department for Public Health may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. The revenues received will not change in subsequent years without an amendment to this administrative regulation.

Revenues: The potential revenue for this administrative regulation is \$10,120. This is a combined total for both state and local health departments.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. The revenues received will not change in subsequent years without an amendment to this administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): Additional regulated entities include communities that have a bathing beach.

(a) Estimate the following for the first year:

Expenditures: The costs associated with administering the permitting and inspection program is \$2,376,885.

Revenues: The department is unable to determine the potential revenue for the impacted communities that have a bathing beach.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures will not change in subsequent years without an amendment to this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not add any additional requirements to the regulated entities. The current permit and inspection fees are listed in 902 KAR 10:121. However, that administrative regulation will be repealed. The proposed fee for the annual permit and required inspection will increase by ten (10) percent of the current fee.

(b) Methodology and resources used to determine the fiscal impact: The estimated total revenue for the department was determined by multiplying the number of current permitted public beach facilities in each category by the proposed fee increase. Each public beach facility will be assessed an annual permit fee. That estimate was determined by multiplying the total number of permitted facilities by the proposed fee. The estimated inspection fee total and the permit fee total were added together to calculate the total revenue. Proposed Fee Structure: Beaches. Size: 149 linear feet or less of beach front, 10 beaches, proposed fee of \$99, potential revenue of \$990. Size: 150 to 200 linear feet of beach front, 10 beaches, proposed fee of \$192.50, potential revenue of \$1,925. Size: 201 or more linear feet of beach front, 14 beaches, proposed fee of \$192.50 + \$55 for each additional 50 linear square feet, potential revenue of \$3,465 (at a minimum). Total beaches: 34; total potential revenue: \$6,380. Annual Permit Fee for all beaches: 34 beaches, proposed fee of \$110, potential revenue of \$3,740.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: The total anticipated revenue is significantly less than the \$500,000 or more threshold.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amended After Comments)

922 KAR 1:490. Background checks for foster and adoptive parents and relative and fictive kin caregivers.

RELATES TO: KRS 17.500-17.580, 27A.090, 194A.005(1), 199.011(6), (9), (14), 199.462(1), 199.470(4), 211.684, 600.020(7), (28), (40), (61), (62), 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 247d, 671(a)(20), 5106a, 5141

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(5), 199.640(5), 605.120(5), (6), 605.130(7), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative

regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.462(5) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, or a relative or fictive kin caregiver. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS 605.130(7), by which the cabinet shall perform ~~[such]~~ other services as may be deemed necessary for the protection of children. KRS 199.640(5) **requires the secretary [authorizes the cabinet]** to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. 45 C.F.R. 1356.30 requires criminal record checks be conducted for prospective foster and adoptive parents. This administrative regulation establishes background check requirements for relative and fictive kin caregivers, ~~[or]~~ applicants seeking to provide foster or adoptive services, or individuals seeking an independent adoption. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

Section 1. Definitions.

- (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.
- (2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:
 - (a) Investigation or assessment in accordance with 922 KAR 1:330; or
 - (b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.
- (3) "Adolescent member of the household" means a youth who:
 - (a) Resides in the home of:
 1. An individual who applies for approval or has been approved to provide foster or adoptive services; or
 2. A relative or fictive kin caregiver;
 - (b) Is age twelve (12) through age seventeen (17); and
 - (c) Is not placed in the home by a state agency.
- (4) "Adult member of the household" means an adult who:
 - (a) Resides in the home of:
 1. An individual who applies for approval or has been approved to provide foster or adoptive services; ~~[or]~~
 2. A relative or fictive kin caregiver; or
 3. An individual applying for an independent non-relative adoption as defined in 922 KAR 1:010 or an independent relative adoption petitioner who is exempt as defined in KRS 199.470(4); and
 - (b) Is eighteen (18) years of age or older.
- (5) "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child ~~[in the custody of the state]~~ under:
 - (a) 922 KAR 1:350, Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers; ~~[or]~~
 - (b) 922 KAR 1:310, Standards for child-placing agencies placing children who are in the custody of a state agency;
 - (c) 922 KAR 1:315, Standards for child-placing agencies placing children who are not in the custody of a state agency; or
 - (d) 922 KAR 1:010, Independent non-relative adoptions.
- (6) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

- (7) "Child fatality" is defined by KRS 211.684.
- (8) "Child-placing agency" is defined by KRS 199.011(6).
- (9) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).
- (10) "KARES system" means the cabinet's secure, web-based application used to access abuse and neglect registries and facilitate fingerprint-supported state and national criminal background checks for authorized users of the system.
- (11) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.
- (12) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).
- (13) "Rap back system" is defined by KRS 199.011(14).
- (14) "Relative caregiver" means a relative with whom the child is, or shall be, placed by the cabinet.
- (15) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.
- (16) "Sexual abuse" is defined by KRS 600.020(61).
- (17) "Sexual exploitation" is defined by KRS 600.020(62).

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants.

- (1) An applicant pursuant to 922 KAR 1:310 or 922 KAR 1:350, and each adult member of the household, shall submit to a background check in accordance with Section 4 of this administrative regulation, which shall include:
 - (a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:
 1. Kentucky Justice and Public Safety Cabinet; or
 2. Administrative Office of the Courts;
 - (b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;
 - (c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and
 - (d) An address check of the Sex Offender Registry.
- (2) Prior to approval of an applicant pursuant to 922 KAR 1:310 or 922 KAR 1:350, each adolescent member of the household shall complete a DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members, and submit to a child abuse or neglect check conducted by the cabinet.
- (3) **An exemption to the fingerprint check requirement pursuant to subsection (1)(c) of this section may be granted by the department if an adult household member of the applicant is medically unable to appear for fingerprints, as set forth in a written request submitted by the agency to designated department staff, which shall include:**
 - (a) The adult household member's name and date of birth;**
 - (b) The nature of the adult household member's medical condition necessitating an exemption; and**
 - (c) Attached medical documentation of the adult household member's medical condition [if a household member of the applicant is bedridden, homebound, or medically unable to appear for fingerprints, the agency shall submit a memo to designated cabinet staff].**

Section 3. Background Checks for Foster or Adoptive Applicants Who Will Accept Placement of a Child Not in the Custody of the Cabinet.

- (1) An individual applying to accept placement of a child not in the custody of or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, pursuant to 922 KAR 1:315 ~~[922 KAR 1:340]~~, shall be exempt from enrollment in KARES and subject to the requirements established in Section 9(3) ~~[8(3)]~~ of this administrative regulation.
- (2) An applicant pursuant to 922 KAR 1:315 ~~[922 KAR 1:340]~~ and each adult and adolescent member of the household shall complete a separate DPP-157 and submit to:
 - (a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:
 1. Kentucky Justice and Public Safety Cabinet; or
 2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet pursuant to 922 KAR 1:470;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

(d) An address check of the Sex Offender Registry.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:

(a) Been found by the cabinet to have:

1. Committed sexual abuse or sexual exploitation of a child;
2. Been responsible for a child fatality or near fatality related to abuse or neglect;
3. Abused or neglected a child within the seven (7) year period immediately prior to the application; or
4. Had parental rights terminated; or

(b) A matter pending administrative review.

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has a:

1. Felony conviction involving:

a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20); or

b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application; or

2. Criminal conviction relating to child abuse or neglect; ~~[-or]~~

~~[3.] [Civil judicial determination related to child abuse or neglect;]~~

(b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or

(c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.

(5) An individual identified in accordance with subsection (3) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 4. Fingerprint-Based Background Checks.

(1) Fingerprint-based background checks shall be conducted for the following individuals through the Kentucky National Background Check Program pursuant to 906 KAR 1:190, using the KARES system:

(a) An applicant pursuant to 922 KAR 1:310 or 922 KAR 1:350 and each adult member of the household; and

(b) A relative or fictive kin caregiver who has lived outside of the state of Kentucky within the last five (5) years; ~~and~~

~~[(c)] [An applicant who was approved under the waiver for fingerprint-based background checks during the declared national emergency caused by the COVID-19 pandemic, with only a name-based criminal background check].~~

(2) An individual meeting the criteria of subsection (1) of this section shall provide to the cabinet or child-placing agency:

(a) A copy of his or her driver's license or other government-issued photo identification for verification that the photograph and name clearly match the individual submitting to the check; and

(b) A completed and signed:

1. DPP-162, Applicant Waiver Agreement and Statement; and

2. DPP-163, Disclosures to be Provided to and Signed by the Applicant and Adult Household Members.

(3) Cabinet or child-placing agency staff shall log on to the NBCP portal and enter the individual's information for a check of the:

(a) Child abuse and neglect check conducted by the cabinet for each state of residence during the past five (5) years [central registry pursuant to 922 KAR 1:470];

(b) National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921; ~~and~~

(c) Sex Offender Registry in accordance with KRS 17.500 through 17.580;

(d) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts; and

(e) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation.

(4)

(a) In accordance with KRS 199.462(2) and 42 U.S.C. 671(a)(20), the cabinet or child-placing agency shall submit payment by [via] credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If an applicant's rap back has not expired, a new fingerprint check shall not be required.

(b) A child-placing agency enrolled in the NBCP shall pay a fee not to exceed thirty (30) [twenty-five (25)] dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services for each applicant.

(5)

~~[(a)] [Upon submission of payment in accordance with subsection (4) of this section, cabinet or child-placing agency staff shall print a copy of the DPP-164, Applicant Live Scan Fingerprinting Form, from the NBCP portal and provide the form to the applicant, adult member of the household, or relative or fictive kin caregiver.]~~

~~[(b)] Cabinet or child-placing agency staff shall have[:]~~

~~[1.] [Have] no more than ninety (90) calendar days from the date of payment pursuant to subsection (4) of this section to submit the applicant's fingerprints at an authorized collection site for NBCP; and]~~

~~[2.] [Instruct the applicant or other individual to present the completed DPP-164 and copy of driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission].~~

(6) Upon completion of the background check required by this section, ~~[or] Section 6, or Section 7~~ of this administrative regulation, the cabinet shall provide notice to the requesting agency that the applicant or individual is:

(a) Approved; or

(b) Not approved due to a disqualifying background check result pursuant to subsection (7) of this section.

(7) An applicant or individual shall not be approved if the results of the background check indicate a:

(a) Felony conviction involving:

1. A spouse, a child, sexual violence, or death as established in 42 U.S.C. 671(a)(20); or

2. Physical abuse, battery, drugs, or alcohol within the five (5) year period prior to application;

(b) Criminal conviction relating to child abuse or neglect;

(c) Civil judicial determination related to child abuse or neglect;

(d) Result of a child abuse or neglect check in which the applicant, relative or fictive kin caregiver, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily pursuant to KRS 625.050 through 625.120 or another state's laws; or

(e) Result of an address check in the Sex Offender Registry and supporting documentation that a sex offender resides at the applicant's or individual's home address.

(8) An applicant or individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 5. Request for a Child Abuse or Neglect Check from Another State.

(1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) if a:

(a) Completed DPP-157 or DPP-159, Background Check Request for Relative and Fictive Kin Caregivers, or Adolescent and Adult Household Members, is submitted to the cabinet; or

(b) Request is received on agency letterhead and includes two (2) numeric identifiers.

(2) The cabinet shall:

(a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the fee specified in 922 KAR 1:470.

Section 6. Background Checks Required for a Relative or Fictive Kin Caregiver.

(1) A relative or fictive kin caregiver, and each adult member of the household, shall complete a DPP-159 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry conducted by the cabinet;

(2) A relative or fictive kin caregiver, and each adult member of the household, who has lived outside the state of Kentucky during the past five (5) years shall complete a[and]

[(d)] [A] fingerprint-based background check conducted through the NBCP, pursuant to Section 4 of this administrative regulation, beginning July 1, 2021, if the relative or fictive kin caregiver, or adult household member, has lived outside the state of Kentucky during the past five (5) years].

(3)[(2)] An adolescent member of a relative or fictive kin caregiver's household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet.

(4)[(3)] A child abuse or neglect check conducted by the cabinet shall identify the name of each applicant and adolescent and adult member of the household and include any finding consistent with Section 4(7) of this administrative regulation.

(5)[(4)] A relative or fictive kin caregiver shall not be approved if a criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 4(7) of this administrative regulation.

(6)[(5)] An individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 7. Background Check Requirements for an Independent Relative or Non-Relative Adoption.

(1) An individual applying for an independent non-relative adoption pursuant to 922 KAR 1:010 or an independent relative adoption petitioner who is exempt as defined in KRS 199.470(4), and each adult member of the household, shall submit to a background check, which shall include:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years; and

(c) An address check of the Sex Offender Registry conducted by the cabinet.

(2) An applicant, and each adult member of the household, who has lived outside the state of Kentucky during the past five (5) years shall complete a criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation.

(3) Prior to approval of an individual, each adolescent member of the household shall complete a DPP-157 and submit to a child abuse or neglect check conducted by the cabinet.

Section 8. [Section 7.] Approval.

(1) Except for the provisions of Section 4(7) or 6(5)[6(4)] of this administrative regulation, approval of an applicant, including an

applicant for an independent adoption, fictive kin, or relative caregiver who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 4(7) or 6(5)[6(4)] of this administrative regulation, an applicant, fictive kin, or relative caregiver may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

(a) An adolescent member of the household has:

1. Been found by the cabinet to have abused or neglected a child; or

2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or

(b) An adult member of the household has:

1. Been convicted of a nonviolent felony or misdemeanor;

2. Been found to have abused or neglected a child; or

3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 9. [Section 8.] Reevaluation.

(1) Once enrolled in KARES, an approved foster or adoptive parent and each adult member of the household shall maintain enrollment in KARES.

(2)

(a) An approved foster or adoptive parent and each adult member of the household enrolled in KARES shall annually, prior to or during the anniversary month of initial KARES determination, undergo:

1. A child abuse or neglect check conducted by the cabinet; and

2. An address check of the Sex Offender Registry conducted by the cabinet.

(b) An active foster or adoptive home shall be closed if an individual undergoing an annual check pursuant to this subsection has a disqualifying background check result established in Section 4(7) of this administrative regulation.

(3) [An approved foster or adoptive parent and each adult member of the household not already enrolled in KARES, with the exception of individuals specified in Sections] [Section] [3 and 7 of this administrative regulation, shall submit to a fingerprint-based background check required by Section 4 of this administrative regulation prior to or during the anniversary month of initial approval.]

[(4)] [(3)] An applicant specified in Section 3 of this administrative regulation and not enrolled in KARES shall submit annually, prior to or during the anniversary month of initial approval, to:

(a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;

(b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry.

[(4)] [(5)] [(4)]

(a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 4 of this administrative regulation.

(b) If an adult becomes a new member of a relative or fictive kin caregiver's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 6 of this administrative regulation.

[(6)] [(5)] If an adolescent becomes a new member of an approved foster or adoptive parent or a relative or fictive kin caregiver's household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of

residence within the household in accordance with Section 2(2) or 6(2) of this administrative regulation, respectively.

Section 10.~~[Section 9.]~~ Maintenance of Records.

(1) A child-placing agency shall maintain the approval status of each foster and adoptive applicant who has submitted to a fingerprint-based criminal background check by reporting the status in the NBCP web-based system.

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2), 3(2), or 5 of this administrative regulation shall be maintained by the child-placing agency.

(3) A completed copy of each DPP-159 submitted and criminal records check conducted pursuant to Section 5 or 6 of this administrative regulation shall be maintained.

Section 11.~~[Section 10.]~~ Communications. This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

(1) KRS 620.050(5); or

(2) The terms and conditions of:

(a) A release of information signed by the applicant or foster or adoptive parent; or

(b) The agreement between the cabinet and the child-placing agency.

Section 12.~~[Section 11.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members", 10/24/07/21;

(b) "DPP-159, Background Check Request for Relative and Fictive Kin Caregivers, or Adolescent and Adult Household Members", 10/24/06/21;

(c) "DPP-162, Applicant Waiver Agreement and Statement", 07/21; and

(d) "DPP-163, Disclosures to be Provided to and Signed by the Applicant and Adult Household Members", 06/21~~;~~ and

~~[(e)] ["DPP-164, Applicant Live Scan Fingerprinting Form", 06/21].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbcs/Pages/default.aspx>.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 4, 2024

FILED WITH LRC: November 7, 2024 at 8:20 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles and Rachel Ratliff

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes background check requirements for relative and fictive kin caregivers, applicants seeking to provide foster or adoptive services, or individuals who wish to complete an independent adoption.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for background checks for foster and adoptive applicants and parents and relative and fictive kin caregivers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives, fictive kin,

prospective foster or adoptive parents, and other household members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of background check requirements for foster and adoptive applicants, relative and fictive kin caregivers, and household members to ensure the safety of children.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes background check provisions for independent non-relative adoptions and independent relative adoptions and includes that foster and adoptive applicants already in KARES shall undergo a child abuse or neglect check and sex offender check conducted by the cabinet every year. The amendment to this administrative regulation also increases the administrative fee for the KARES fingerprint-based background check from up to twenty-five (25) dollars to up to thirty (30) dollars due to an increase from the contracted third party, IDEMIA Identity & Security USA. Additional amendments were made to make technical corrections and provide clarification in response to written comments received during the public comment period.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure protections for all fostered or adopted Kentucky children. The fee increase is necessary because, in accordance with a state master agreement, IDEMIA Identity & Security USA serves as the central hub for fingerprint-supported background checks. IDEMIA raised their rates per fingerprint check. The cabinet has been covering the cost of this rate increase for over a year, this amendment is necessary in order for private providers to pay the actual cost of the check.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 199.462(5) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, or a relative or fictive kin caregiver. The amendment conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives and fictive kin, prospective foster or adoptive parents, and other household members.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures compliance with federal and state law and the safety of children.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of June 2, 2024, there were a total of 8,170 children that were placed outside of their home of origin, including foster or adoptive placements and children being cared for by relative and fictive kin caregivers. Of these, over 1,000 are placed with non-foster home relative or fictive kin caregivers, over 2,700 are placed in all types of public (DCBS) foster homes, and over 2,900 are placed in private agency foster homes. There are currently 2,616 private agency foster homes (107 private child-placing agencies) and 1,939 public foster homes subject to the background checks required by this administrative regulation. In 2023, 5,205 public foster and adoptive applicants underwent fingerprint-based background checks paid for by the cabinet and 4,088 private foster and adoptive applicants underwent fingerprint-based background checks paid for by 36 private agencies. Pursuant to this amendment, individuals seeking an independent adoption will also be subject to a background check.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An individual applying for an independent non-relative adoption or an independent relative adoption petitioner, and each adult member of the household, shall undergo an in-state

criminal records check, a child abuse or neglect check, and a sex offender registry check.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants subject to these background check requirements have their background check costs borne by the cabinet or a private child-placing agency in the course of the agency's business practices. The administrative cost of the background check has increased. Per state law, the cabinet cannot charge more than the actual cost of processing the background check.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The further protection of children in the care of foster or adopted parents or relative or fictive kin caregivers.

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

(a) Initially: The cabinet is already paying the increased administrative costs of KARES and the amendment will be enacted through practices and contacts that are already a part of existing services provision so that there will be no additional costs to the administrative body.

(b) On a continuing basis: This amendment does not result in additional costs to the cabinet.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E (of the Social Security Act), Temporary Assistance for Needy Families Block Grant funds, and State General Funds are the sources of funding to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees is necessary and is included in this amendment. The company the Kentucky State Police contract with to complete national fingerprint-based background checks, IDEMIA Identity & Security USA, has increased their fee per background check for the first time. The cabinet has been covering the cost of this price increase.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does directly increase a fee. The amendment increases the administrative fee for the fingerprint-based background check from up to twenty-five (25) dollars to up to thirty (30) dollars. The cabinet is currently covering this cost increase for providers until this amendment is implemented. The fee increase is necessary because, in accordance with a state master agreement, IDEMIA Identity & Security USA serves as the central hub for fingerprint-supported background checks. IDEMIA recently raised their rates per fingerprint check.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1356.30, 42 U.S.C. 247d, 671(a)(20), 5106a, 5141

(2) State compliance standards. KRS 194A.050(1), 199.462(5), 199.640(5), 605.120(5), (6), 605.130(7), 605.150

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1356.30 requires criminal record checks be conducted for prospective foster and adoptive parents.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Existing standards do impose stricter requirements than the federal mandate because the cabinet requires the denial of an applicant if: (1) A criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) A child abuse or neglect check conducted by the cabinet reveals that a household

member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily. These standards are currently in place.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional restrictions noted in this analysis were added as additional safeguards for children in out-of-home care. The federal law does not prohibit the addition of these restrictions.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.462(5), 199.640(5), 605.120(5), (6), 605.130(7), 605.150, 45 C.F.R. 1356.30

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services, the Kentucky State Police, and the Administrative Office of the Courts will be impacted by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue. The cost of fingerprint-based background checks cannot exceed the cabinet's cost; therefore, revenue is not generated.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this administrative regulation will not generate revenue in subsequent years. Fees charged by law enforcement, judicial agencies, or the state for criminal background checks cannot exceed the actual costs of conducting the checks.

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

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not expected to differ over subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Private child-placing agencies will pay the cost of the background check increase, which is \$2 per check. In 2023, 36 private agencies paid for the background check of 4,088 private foster and adoptive applicants. The cabinet paid this cost for 5,205 public foster and adoptive applicants. This administrative regulation will generate no revenue. Fees passed along to regulated entities are not allowed to exceed the actual cost of the check. This increase is necessary due to a recent IDEMIA rate increase.

(a) Estimate the following for the first year:

Expenditures: Not applicable.

Revenues: Not applicable.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not have a fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: There is not a fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact to entities.

(b) The methodology and resources used to reach this conclusion: This regulatory amendment will not have a major economic impact on child-placing agencies that participate in the National Background Check Program. The cost of conducting a national fingerprint-based background check has increased for the first time, but this is a minimal increase that will be implemented at a later date.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

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)
 1. With a validated substantiated finding of adult abuse, neglect, or exploitation; and
 2. If applicable, [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, 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 subsections [Section 3](1) and (2) of this section [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 ~~shall be~~ conducted by the Office of Administrative Hearings within the Department of Law ~~(cabinet or its designee)~~ ~~shall be~~ in accordance with KRS 15.111(2)(h), 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 cabinet secretary's ~~(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: November 13, 2024

FILED WITH LRC: November 14, 2024 at 8:20 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFRegs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rachel Ratliff 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. The administrative regulation is being amended to make technical corrections to provide clarity and compliance with the rules of KRS 13A.

(b) The necessity of this administrative regulation: This amended 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 amended administrative regulation conforms to the authorizing statutes by establishing a vulnerable adult maltreatment registry for individuals who have a validated substantiated finding of adult abuse, neglect, or exploitation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended 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. Additional amendments were made as a result of written comments received to provide clarity to technical language.

(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 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 additional facilities to request submit an inquiry to the vulnerable adult maltreatment registry for prospective or current employees, but it is not mandatory.

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*.

**OFFICE OF ATTORNEY GENERAL
Department of Law
Office of Administrative Hearings
(Amendment)**

40 KAR 5:010. Hearing officer required training.

RELATES TO: KRS 13B.030(4)

STATUTORY AUTHORITY: KRS 13B.030(4)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with KRS 13B.030(4) which requires the office[division] to establish by administrative regulation[regulations] minimum standards concerning length of training, course content, and instructor qualifications for initial training and continuing education of hearing officers. The function of this administrative regulation establishes[is to establish] education requirements for hearing officers.

Section 1. Definitions.

(1) "Agency" is defined by KRS 13B.010(1).

(2) "Approved training" means initial instruction or continuing education that has been approved by the office in accordance with this administrative regulation.

(3) "Credit" means a unit equal to one (1) instructional hour used for measuring initial training requirements and continuing education requirements.

(4) "Educational year" means the reporting period for mandatory continuing education requirements beginning on July 1 of each year and ending on June 30 of the successive year for which satisfaction of the continuing education training requirements is being calculated.

[(1)] ["Classroom hour" means fifty (50) minutes of actual classroom instruction.]

(5)[(2)] "Hearing officer" is defined by KRS 13B.010(5)[KRS 13B.010(7)].

(6) "Instructional hour" means fifty (50) minutes of instruction. The instruction can be presented in person or by other technological transmission methods including video recording, DVD, audio recording, CD-ROM, computer online services, internet live-stream, internet video-on-demand service, or other appropriate technology. The instruction can be live or pre-recorded.

(7) "Office" is defined by KRS 13B.010(6).

(8) "Sponsor" means the person or entity presenting the training course. The sponsor and the instructor can be one in the same.

(9) "Training course" means initial hearing officer instruction or a continuing education that is in accordance with this administrative regulation.

Section 2. Training Requirements. In addition to any agency-specific training or requirements, an individual shall complete the initial training requirements and satisfy the continuing training requirements of this administrative regulation in order to serve as a hearing officer.

[Section 2.] [A person shall not serve as a hearing officer unless he has completed eighteen (18) classroom hours, including agency specific training, of initial hearing officer instruction, and six (6) classroom hours of continuing education instruction as provided by Sections 3 and 5 of this administrative regulation.]

Section 3. Initial Training Requirements. The initial hearing officer training requirement shall be eighteen (18) instructional hours of approved training.

Section 4. Continuing Education Training Requirements.

(1) A hearing officer shall earn a minimum of six (6) credits of approved training each educational year.

(2) A hearing officer who earns more than six (6) credits for an educational year may carry forward up to twelve (12) credits to satisfy the continuing education requirements for the next two (2) educational years.

(3) Any excess credits earned in an educational year greater than twelve (12) credits shall not be carried forward.

(4) Credits shall not be carried forward more than two (2) years.

Section 5. Qualifying Standards for Training Courses. Training courses shall consist of a topic or topics that contribute to the skills necessary to serve as a competent hearing officer such as:

(1) Adequate notice;

(2) Administrative law and procedure;

(3) Application of KRS Chapter 13B;

(4) Case management;

(5) Conduct and control of hearings;

(6) Credibility of witnesses;

(7) Decision writing;

(8) Due process;

(9) Ethics;

(10) Evidence;

(11) Findings and evidence;

(12) Intervention;

(13) Mediation; and

(14) Prehearing conferences and discovery.

Section 6. Approvals and Instructor Qualifications.

(1) A training course shall only qualify for credit if it is approved by the office as meeting the standard of Section 5 of this administrative regulation.

(2) Any person, entity, or sponsor of a training course seeking to qualify it for credit shall provide to the office for evaluation:

(a) An outline of the course in sufficient detail to disclose the pertinent material that is to be taught;

(b) The work experience, credentials, and educational background of the training course instructor; and

(c) any other information requested by the office to determine the appropriateness of the course.

(3) A hearing officer training course shall be conducted substantially as submitted for approval by the office.

(4) Training Course Instructor.

(a) The instructor shall have substantial, recent experience and demonstrated ability in offering the training for which credit is sought; and

(b) The instructor shall have the education, training, or experience to provide training in the subject matter of the presentation. For example, appropriate education, training, or experience may be demonstrated by having taught or conducted an approved training course within the past two (2) years, academic credentials or qualifications, writings or publications authored by the individual, or public speaking or panel presentations involving subject matters relevant to administrative hearings or the practice of administrative law.

(5) It shall be the responsibility of the individual seeking credit for the satisfaction of training requirement to ensure that the course has been approved by the office. The individual seeking credit shall bear the risk of seeking approval for courses already taken without pre-approval.

Section 7. Compliance.

(1) An individual shall not serve as a hearing officer in an administrative hearing unless compliant with the training requirements of this administrative regulation.

(2) If the agency utilizes a hearing officer not provided by the office, the agency shall ensure that the hearing officer is compliant

with the training requirements of this administrative regulation, at a minimum.

[Section 3.] [Approved Instruction. Approved instruction for hearing officers shall be the administrative hearings subjects established by this section.]

[(1)] [Instruction in the conduct of administrative hearings in each of the following areas:]

[(a)] [Administrative law and procedure. The course shall cover the:]

[1.] [History, origin, source, and limitations of agency authority to act;]

[2.] [Role of hearing officials;]

[3.] [Adjudicatory function as opposed to and differentiated from the regulatory and enforcement functions of an agency; and]

[4.] [Regulatory and enforcement processes of agencies.]

[(b)] [Due process. The course shall cover the fundamentals of constitutional due process concepts of adequate notice and a reasonable opportunity to be heard, and shall emphasize constitutional restrictions on notice and a hearing.]

[(c)] [Conduct and control of hearings. The course shall cover the following items and include applicable documentary samples:]

[1.] [The role of prehearing conferences and discovery;]

[2.] [Opening a hearing;]

[3.] [The conduct of a hearing;]

[4.] [The order of proof;]

[5.] [Marking and handling exhibits;]

[6.] [Ruling on objections;]

[7.] [Swearing in of witnesses;]

[8.] [Proper demeanor, dress, formality, and decorum;]

[9.] [Making the hearing accessible to handicapped persons; and]

[10.] [Closing a hearing.]

[(d)] [Credibility. The course shall cover:]

[1.] [Judging demeanor and forthrightness of witnesses, appearance and body language;]

[2.] [Sexual, racial and cultural bias, and prejudice; and]

[3.] [Judging common sense of answers, consistency, context and flow.]

[(e)] [Ethics. The course shall include:]

[1.] [The principles of:]

[a.] [Conflict of interest;]

[b.] [Ex parte contact;]

[2.] [Ethical standards to which hearing officers, judges and lawyers are held; and]

[3.] [A review of the ethical code applicable to hearing officers, judges and lawyers.]

[(f)] [Case file and docket management. The course shall cover the principles of:]

[1.] [Case file composition, handling, docketing and tracking;]

[2.] [Keeping exhibit and witness lists;]

[3.] [Motion practice;]

[4.] [Setting discovery deadlines;]

[5.] [Continuances;]

[6.] [Reviewing the record, hearing decision time limitations and extensions thereof.]

[(g)] [Evidence in administrative proceedings. The course shall include a review of the following items, and applicable samples of documentary and testimonial evidence:]

[1.] [Competency;]

[2.] [Documentary evidence;]

[3.] [Demonstrative evidence;]

[4.] [Hearsay;]

[5.] [Privileges;]

[6.] [Work-product rule;]

[7.] [Oaths and swearing;]

[8.] [Establishing a foundation;]

[9.] [Cumulative, proffered, and confidential evidence;]

[10.] [Official notice;]

[11.] [Handling evidence; and]

[12.] [Standards and burdens of proof applicable in administrative proceedings.]

[(h)] [Decision writing. The course shall cover the following items and include written samples:]

[1.] [The function and purpose of the written decision;]

[2.] [The basic administrative decision format;]

[3.] [How to differentiate between factual findings and legal conclusions;]

[4.] [How to identify and establish jurisdiction over subject matter and parties;]

[5.] [How to establish the procedural history;]

[6.] [How to use an appropriate format; and]

[7.] [A review of writing style, tone and organization.]

[(2)] [The course shall include training in the application of KRS Chapter 13B, and shall consist of instruction in each of the following areas:]

[(a)] [Conflict of interest. The course shall cover conflicts of interest as addressed in KRS 13B.040 including:]

[1.] [Who is governed;]

[2.] [What kind of contact is prohibited;]

[3.] [Prohibited actions or conduct, including serving as, or assisting or advising a hearing officer;]

[4.] [The mechanics of withdrawal;]

[5.] [Determination of who is an investigator or prosecutor who acted in the same proceeding, or the preadjudicative stage of an administrative hearing; and]

[6.] [The standard to be applied.]

[(b)] [Ex parte contact. The course shall cover improper ex parte contact as defined in KRS 13B.100 including:]

[1.] [The concept of "substantive" as opposed to "procedural" inquiries and a determination of the "merits" of an administrative action;]

[2.] [Who is prohibited from making ex parte inquiries;]

[3.] [Under what circumstances hearing officials and assistants may talk ex parte with "parties" and other "interested persons";]

[4.] [Specific instruction on how to handle ex parte contact, how to train support staff and the method required to document ex parte contact in the record;]

[5.] [Contacts by agency and outside counsel, contacts by the hearing officer and contacts with the agency head or other agency personnel;]

[6.] [Case studies and written materials, including ethical opinions from the Bar, relevant case decisions, and the relevant judicial canons and rules of professional conduct applicable to judges and attorneys.]

[(c)] [Adequate notice. The course shall cover the contents and effect of the notice of hearing required by KRS 13B.050, including:]

[1.] [Scheduling and time limits;]

[2.] [Improper mailing;]

[3.] [Incomplete or improper notice content; and]

[4.] [The effect of violation of KRS 13B.050 and remedies therefore.]

[(d)] [Intervention. The course shall cover intervention under KRS 13B.060 and include sample petitions and orders:]

[1.] [Mandatory and permissive intervention;]

[2.] [Statutory rights to intervention;]

[3.] [The standard for permissive intervention;]

[4.] [The procedure for petitioning to intervene;]

[5.] [Structuring the intervention; and]

[6.] [Writing the order permitting or denying intervention.]

[(e)] [Prehearing conferences and discovery. The course shall cover the nature, scope and purpose of a prehearing conference under KRS 13B.070 including:]

[1.] [Its relation to settlement, alternative dispute resolution, discovery and the hearing process;]

[2.] [Methods of managing and scheduling prehearing conferences that will promote the orderly and prompt conduct of a hearing, including the filing of motions, prehearing memorandums, witness and exhibit lists, briefs, proposed findings, conclusions, and recommended orders;]

[3.] [Discovery available under KRS 13B.050, 13B.080 and 13B.090;]

[4.] [Discovery orders and problems;]

[5.] [Issuance, quashing and enforcement of subpoenas and the standards therefore;]

[6.] [The obligation to reveal documentary or tangible evidence and exculpatory evidence in the agency's possession, and the consequences of the failure to do so; and]

[7.] [Written samples of prehearing conference orders, motions and subpoenas;]

[(f)] [Hearing procedures and compiling the record. The course shall cover and include material relating to the following items:]

[1.] [Methods to ensure the orderly and prompt conduct of the hearing under KRS 13B.080;]

[2.] [The obligation to have testimony given under oath, and the swearing of witnesses;]

[3.] [Briefs;]

[4.] [Argument;]

[5.] [Testimony;]

[6.] [Marking and admission of evidence;]

[7.] [Granting defaults, and the procedures and standards for rendering defaults;]

[8.] [The meaning and composition of the record under KRS 13B.130; and]

[9.] [The method of compiling the record for review, including submission in writing, and proffers of evidence.]

[(g)] [Findings and evidence. The admissibility of hearsay and standards therefor. The course shall:]

[1.] [Cover the basic evidentiary standard for all types of evidence;]

[2.] [Constitutional, statutory grounds for exclusion and privileges recognized in Kentucky law;]

[3.] [Ruling on and memorializing objections; and]

[4.] [Taking "official notice" of facts.]

[(h)] [The recommended order and writing for judicial review. The course shall cover the following items and include samples of written findings, conclusions and recommended orders:]

[1.] [The nature, scope, and function of findings and conclusions under KRS 13B.110;]

[2.] [The interrelation with evidentiary rulings under KRS 13B.050 and 13B.090;]

[3.] [Compilation of the record under KRS 13B.130;]

[4.] [The standards for judicial review under KRS 13B.150;]

[5.] [The obligation to base findings only upon the evidence in the record, under KRS 13B.090(1); and]

[6.] [Time limits, extensions, and the consequences of the failure to file a recommended order within statutory time periods.]

[(3)] [Agency specific training. Instruction shall include agency specific training that:]

[(a)] [Covers the specific federal and state authorizing statutes and regulations under which a hearing officer will conduct hearings; and]

[(b)] [Has been approved by the agency head and the division.]]

[Section 4.]

[(1)] [An initial hearing officer instruction or continuing education course shall:]

[(a)] [Comply with the provisions of Sections 3 and 5 of this administrative regulation;]

[(b)] [Consist of topics that will enable a hearing officer to:]

[1.] [Acquire, maintain, and improve his skills as a hearing officer; and]

[2.] [Serve the public; and]

[(c)] [Consist of a minimum of two (2) hours.]

[(2)]

[(a)] [Credit shall be granted for completion of an initial hearing officer instruction or continuing education course that has been approved by the division.]

[(b)] [A sponsor of an education course shall submit for approval by the division:]

[1.] [An outline of the course in sufficient detail to disclose the pertinent material that is to be taught; and]

[2.] [The work experience, credentials, and education background of the instructor of the course.]]

[Section 5.] [Continuing Education.]

[(1)] [An education year shall begin on July 1, and end on June 30 of the next calendar year.]

[(2)] [Credit shall be given for continuing education courses that have been completed on or before June 30.]

[(3)] [For each education year, a person certified as a qualified hearing officer pursuant to KRS Chapter 13B shall complete a minimum of six (6) credit hours of continuing education courses that have been approved by the division.]

[(4)] [A hearing officer who earns more than six (6) credits of continuing education may carry forward a total twelve (12) credits.]

[(5)] [A total of six (6) of the continuing education credits earned in an education year may be credited toward satisfaction of the continuing education requirement for each of the two (2) continuing education years following the education year in which they were earned.]

[(6)] [Continuing education credits earned in an education year in excess of twelve (12) credits shall:]

[(a)] [Not be carried forward; and]

[(b)] [Remain on the hearing officer's record.]

[(7)] [On or before July 1 of each year, a person certified as a qualified hearing officer under KRS Chapter 13B in this Commonwealth, shall certify to the director the number of credit hours of continuing education hours completed.]

[(8)]

[(a)] [Certification may be submitted to the director upon completion of the continuing education activity at any time during the education year.]

[(b)] [Certification shall not be submitted later than the July 15th immediately following the education year in which the activities were completed.]

[(9)]

[(a)] [If a hearing officer fails to comply with the provisions of this section, the division director shall notify him as soon as practicable on or after August 1 of the same year calendar year.]

[(b)] [The authority to hear administrative actions under KRS Chapter 13B shall be suspended until such time as the continuing education requirements are met.]

RUSSELL M. COLEMAN, Attorney General

J. CHRISTOPHER BOWLIN, Executive Director

APPROVED BY AGENCY: October 30, 2024

FILED WITH LRC: November 4, 2024 at 11:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2025, at 10:00 a.m. Eastern Time at the Kentucky Office of Attorney General, Office of Administrative Hearings, 1024 Capital Center Drive, Room A, 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 January 31, 2025. 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: J. Christopher Bowlin, Executive Director, Office of Administrative Hearings within the Department of Law, Office of Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-2894, email christopher.bowlin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: J. Christopher Bowlin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum standards concerning length of training, course content and instructor qualifications for initial training and continuing education of hearing officers.

(b) The necessity of this administrative regulation: KRS 13B.030(4) requires the office to establish "by administrative regulation minimum standards concerning the length of training, course content, and instructor qualifications."

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13B.030(4) requires that “[a]ll hearing officers, including members of collegial bodies who serve as hearing officers, shall receive training necessary to prepare them to conduct a competent administrative hearing.” The statute also requires the office to establish “by administrative regulation minimum standards concerning the length of training, course content, and instructor qualifications.”

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes minimum standards concerning the length of training, course content, and instructor qualifications.

(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 amended regulation should improve upon the efficiency of the current training requirements for hearing officers. The amendment: 1.) provides the opportunity for live and pre-recorded training through modern technological means; 2.) adds mediation to the list of approved training examples; 3.) defines approved subjects for hearing officer training more succinctly; 4.) eases duplicative training reporting for hearing officers outside of the office, but maintains compliance verification with the agency utilizing the hearing officers in alignment with KRS Chapter 13B; and 5.) conforms the language of the regulation with the Division of Administrative Hearings becoming the Office of Administration Hearings pursuant to KRS 15.111.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to improve upon efficiency, take advantage of existing technology, and change the current language to conform with KRS 15.111.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 13B.030(4) requires that “[a]ll hearing officers, including members of collegial bodies who serve as hearing officers, shall receive training necessary to prepare them to conduct a competent administrative hearing.” The statute also requires the office to “... establish by administrative regulation minimum standards concerning the length of training, course content, and instructor qualifications.”

(d) How the amendment will assist in the effective administration of the statutes: The amendment should 1.) make training opportunities more economical and cost effective by taking advantage of existing technology; 2.) broaden the scope of training opportunities; and 3.) more closely align the monitoring of hearing officer training compliance with the authorizing statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The total number is unknown but the office and all state government agencies conducting administrative hearings with hearing officers as defined by KRS 13B.010(6), KRS 13B.010(1), KRS 13B.010(2), and KRS 13B.010(5), respectively, 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: The responsibilities of the office, agencies, and hearing officers are pre-defined by KRS Chapter 13B. All hearing officers and agencies will need to familiarize themselves with this regulation to ensure hearing officer compliance with the training requirements of this regulations and to ensure appropriate qualifications of hearing officers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with training requirements has already been embedded in the minimum requirements set by KRS Chapter 13B. Because of the new training efficiencies and easing of reporting and monitoring requirements, the entities should not see additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities should collectively see increased efficiencies with respect to compliance with training requirements. The office benefits by complying with the statutory mandate.

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

(a) Initially: The office may bear administrative costs in implementing this regulation, which are expected to be minimal and easily absorbed by the office.

(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 the initial costs, which are estimated to be minimal and easily absorbed by the Office of Attorney General.

(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: None are believed to be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established.

(9) TIERING: Is tiering applied? Tiering was not applied. The training requirements of this regulation applies equally to all current and aspiring hearing officers.

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 13B.030(4).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Office of Administrative Hearings within the Department of Law is the promulgating agency and is an affected agency. All other state agencies that utilize the administrative hearings and hearing officers as defined by KRS 13B.010(1), KRS 13B.010(2), and KRS 13B.010(5), respectively, are affected.

(a) Estimate the following for the first year:

Expenditures: There should be no net expenditures resulting from this regulation.

Revenues: The regulation should not result in any net revenues.

Cost Savings: There should be a net cost savings which are difficult to estimate because of the improvements in the amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There should be continued costs savings in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None

(a) Estimate the following for the first year:

Expenditures: This administrative regulation should not cause expenditures by local entities for the first year.

Revenues: Local entities should receive no revenues from this administrative regulation for the first year.

Cost Savings: Local entities should 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 should not generate any expenditures, revenues, or cost savings for local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There should be no additional regulated entities affected by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation should not cause any additional regulated entities to have any expenditures for the first year.

Revenues: No additional regulated entities should receive any revenues from this administrative regulation for the first year.

Cost Savings: No additional regulated entities should 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 should not cause any additional 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: The training requirements and duties of the office, hearing officers, and agencies were created by KRS Chapter 13B, not this administrative regulation.

This administrative regulation should reduce overall costs for training hearing officers because it: 1.) provides more cost-effective methods of receiving initial and continuing training via modern technological means; 2.) adds to the previous categories of topics that will qualify for approved training; 3.) provides improved guidance for qualification of training; 4.) eases undue reporting of continuing education hours; and 5.) leaves compliance monitoring with the agency, if the agency uses hearing officers outside of the office. For these reasons, the administrative regulation is not expected to have any significant fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The office used a quantitative methodology analysis and consulted with 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) The administrative regulation is not expected to have a major economic impact.

(b) The methodology and resources used to reach this conclusion: The office used a quantitative methodology analysis and consulted with staff resources in determining that the administrative regulation would have no overall negative or adverse major economic impact.

FINANCE AND ADMINISTRATION CABINET **Kentucky Public Pensions Authority** **(Amendment)**

105 KAR 1:451. Quasi-governmental employer reports on independent contractors and leased employees.

RELATES TO: KRS 61.5991, 61.510, 61.543, 61.552, 61.645, 61.675, 61.685

STATUTORY AUTHORITY: KRS 61.5991(1)(c), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705, and to conform to federal statutes and regulations. KRS 61.5991 requires certain employers that participate in the Kentucky Employees Retirement System to report information to the Kentucky Public Pensions Authority on some persons providing services for the participating employer as an independent contractor, a leased employee, or via any other similar employment arrangement. This administrative regulation establishes quasi-governmental employer reports on independent contractors and leased employees.

Section 1. Definitions.

(1) "Contractor Wizard" means an online interactive form that guides employers to certify their non-contributing service providers by answering a series of questions broken into small, manageable steps. "Complete" means all required sections of a form are filled out, the form has been fully executed by an agency head, appointing authority, or authorized designee (such as the reporting official), and all supporting documentation required by the form is included with the form.

(2) "Core services independent contractor" means a person, either personally or through a company or other legal entity, who provides services for a quasi-governmental employer as an independent contractor, other than as a non-core services independent contractor.

(3) "Core services leased employee" means a person who provides services for a quasi-governmental employer as a leased employee through a staffing company, other than as a non-core services independent contractor.

(4) "Direct employment" means employees reported by the quasi-governmental employer in accordance with KRS 61.675 and 105 KAR 1:140.

(5) "Employee" is defined by KRS 61.510(5).

(6) "File" means a form has been received at the retirement office by mail, fax, secure email, or in-person delivery or via

Employer Self Service on the Web site maintained by the agency (if available).

[(7)] "Fiscal year" is defined by KRS 61.510(19).

[(8)] "KPPA" means the administrative staff of the Kentucky Public Pensions Authority.

[(9)] "Noncompliant" means the quasi-governmental employer falsifies, fails to provide, or withholds all, or a portion of, the required documentation or information within the time periods prescribed by this administrative regulation.

[(6)] [(40)] "Non-core services independent contractor" is defined by KRS 61.5991(9).

[(7)] [(44)] "Other employment arrangement" means:

[(a)] [Means] any written agreement between a quasi-governmental employer and a third party (including a person, company, or other legal entity) for one (1) or more persons to provide services for the quasi-governmental employer in exchange for the third party receiving monetary compensation, remuneration, or profit that is not:

[(a) Direct (and]

[(b)] [Does not mean direct] employment; [any written agreement for one (1) or more persons to provide services for a quasi-governmental employer as]

[(b) A] a non-core services independent contractor or a non-core service leased employee agreement; [or]

[(c) A person that would be considered] any written agreement for one (1) or more persons to provide services to a quasi-governmental employer if the persons would not be in a regular full-time position if the person [persons] were directly employed by the quasi-governmental employer.

[(8)] [(42)] "Prior fiscal year" means the fiscal year beginning July 1 that is immediately prior to the fiscal year in which the agency [KPPA] provides the report to the state budget director's office and the Legislative Research Commission required by KRS 61.5991(3).

[(9)] [(43)] "Quasi-governmental employer":

[(a) Means an employer participating in the Kentucky Employees Retirement System that is a local or district health department governed by KRS Chapter 212, state-supported university or community college, mental health/mental retardation board, domestic violence shelter, rape crisis center, child advocacy center, or any other employer that is eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522; and]

[(b) Does not include county attorneys, the Council on State Governments (CSG), the Kentucky Educational Television (KET) Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs (KARP), and the Kentucky Association of Sexual Assault Programs.

[(14)] ["Regular full-time position" is defined by KRS 61.510(24).]]

Section 2. Required [Form for] Annual Reporting.

(1)

[(a) Quasi-governmental] [For the fiscal year beginning July 1, 2021, quasi-governmental] employers shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement:

1. For fiscal years July 1, 2021 through June 30, 2023, by completing and submitting a [the] Form 6756, Annual Employer Certification of Non-Contributing Service Providers, on or before the applicable deadline of the fiscal year in which the Form 6756 was required;

2. For fiscal year July 1, 2023 through June 30, 2024, by completing and submitting the initial Form 6756, Annual Employer Certification of Non-Contributing Service Providers, or the initial Contractor Wizard on or before April 15, 2024; and [filing the Form 6756 at the retirement office on or before May 2, 2022.];

3. [(b)] Effective with the fiscal year beginning July 1, 2025 [2022], and for each fiscal year thereafter, [quasi-governmental employers]

~~shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement] by completing and submitting the initial Contractor Wizard[the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, and filing the Form 6756 at the retirement office. For each fiscal year beginning on or after July 1, 2022, the Form 6756 shall be filed at the retirement office] on or before April 15 of the fiscal year in which the Contractor Wizard[Form 6756] is required.~~

~~(b)(c) If a quasi-governmental employer contracts with[for] any additional persons to provide services as core services independent contractors, core services leased employees, or through any other employment arrangement after the submission of a completed Contractor Wizard or Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as applicable in accordance with paragraph (a)[or paragraph (b)] of this subsection, [but prior to the end of the fiscal year,] the quasi-governmental employer shall:~~

~~1. For fiscal year July 1, 2023 to June 30, 2024, submit[file at the retirement office] a completed supplemental Form 6756 or Contractor Wizard reflecting only those persons not previously reported on the initial Form 6756 or Contractor Wizard. The supplemental Form 6756 or Contractor Wizard shall be submitted[filed at the retirement office] on or before June 30, 2024[of the fiscal year in which the Form 6756 is required].~~

~~2. Effective with the fiscal year beginning July 1, 2024, submit a completed supplemental Contractor Wizard reflecting only those persons not previously reported on the initial Contractor Wizard. The supplemental Contractor Wizard shall be submitted on or before June 30 of the fiscal year in which the Contractor Wizard is required.~~

~~(c) All documentation required by the initial or supplemental Form 6756 or Contractor Wizard shall be submitted with the Form 6756 or Contractor Wizard.~~

~~(2)~~

~~(a) The following persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement[Persons exempted under Sections 5 and 6 of this administrative regulation] shall not be[required to be] listed on an initial or supplemental Contractor Wizard:[the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.]~~

~~1.[(b)] Persons[providing services as core services independent contractors, core services leased employees, or through any other employment arrangement] who would not qualify as an employee in a regular full-time position if directly employed by the quasi-governmental employer; and[shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.]~~

~~2.[(c)] Persons[providing services as core services independent contractors, core services leased employees, or through any other employment arrangement] who would be in a position reported to another state-administered retirement system if directly employed by the quasi-governmental employer[shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers].~~

~~(b)(d)~~

~~[1-] On the initial or supplemental Contractor Wizard, Quasi-governmental employers;~~

~~1. Shall indicate the number of people who meet a reporting exemption as provided in Section 5 of this administrative regulation;~~

~~2. May[may] choose to report persons who meet a reporting exemption as provided in Section 5 of this administrative regulation, and those[providing services as a non-core services independent contractor on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers.]~~

~~[2-] [All] persons[providing services to a quasi-governmental employer as a non-core services independent contractor who are included on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers,] shall be treated in the same manner as all other persons listed on the Contractor Wizard[Form 6756], including determinations by the agency[KPPA] under Section 3 of this administrative regulation; and~~

3. Provide documentation required by the Contractor Wizard for persons marked as meeting a reporting exemption.

~~(3)~~

~~(a) [For the fiscal year beginning July 1, 2021, quasi-governmental employers that do not file at the retirement office a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, on or before May 2, 2022 shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).]~~

~~[(b)] [For each fiscal year beginning on or after July 1, 2022, quasi-governmental employers that do not file at the retirement office a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as required by subsection (1)(b) of this section shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).]~~

~~[(4)] [If a quasi-governmental employer files at the retirement office an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, without the documentation required by the Form 6756, the Form 6756 shall not be complete and the quasi-governmental employer shall be noncompliant in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d) unless a completed Form 6756 is later filed at the retirement office by the appropriate deadline established in subsections (1), (2), and (5) of this section.]~~

~~[(5)]~~

~~[(a)] After receiving an initial or supplemental Contractor Wizard[Form 6756, Annual Employer Certification of Non-Contributing Service Providers], the agency[KPPA] may notify the quasi-governmental employer that additional information is required.~~

~~(b) If additional information is required[by the KPPA], the agency[KPPA] shall notify the quasi-governmental employer in writing to the attention of the agency head, appointing authority, or authorized designee, such as the reporting official, and shall include the following in its notification:~~

~~1. A detailed description of the additional information required; and~~

~~2. A deadline by which the additional information required shall[must] be submitted[filed at the retirement office], which shall not be less than fourteen (14) calendar days, but may be longer than fourteen (14) calendar days.~~

~~(c) An initial or supplemental Contractor Wizard[Form 6756, Annual Employer Certification of Non-Contributing Service Providers,] shall not be considered complete until all additional information requested by the agency is submitted[KPPA is on file at the retirement office].~~

~~(4)~~

~~[(a)][(d)] Except as indicated in paragraph (b) of this subsection, a[If a quasi-governmental employer fails to provide the additional information to the KPPA by the deadline listed in the notification described in paragraph (b) of this subsection or by the deadline agreed upon by the KPPA and the quasi-governmental employer, then the] quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d) if:]-~~

~~1. It fails to submit a valid Contractor Wizard as required by subsections (1) through (2) of this section;~~

~~2. It submits an initial or supplemental Contractor Wizard without the documentation required by the Contractor Wizard; or~~

~~3. It fails to submit additional information requested in accordance with subsection (4) of this section.~~

~~(b) The quasi-governmental employer shall not be reported as noncompliant if, by the appropriate deadline provided in this section, it provides all missing information or documentation, including as applicable:~~

~~1. A completed valid Contractor Wizard in accordance with subsections (1) and (2) of this section;~~

~~2. The documentation required by the Contractor Wizard in accordance with subsections (1) and (2) of this section; or~~

3. Additional information requested in accordance with subsection (3) of this section.

~~(5)[(6)]~~ During an audit of the quasi-governmental employer conducted in accordance with KRS 61.5991(2)(a)2., 61.675, and 61.685:

(a) If the agency[KPPA] discovers that a quasi-governmental employer has failed to list all persons ~~[on a Form 6756, Annual Employer Certification of Non-Contributing Service Providers,]~~ as required by this administrative regulation on the Contractor Wizard, or for reporting prior to fiscal year 2025, a Form 6756, Annual Employer Certification of Non-Contributing Service Providers, then the quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(b) If the agency[KPPA] discovers persons performing services as an independent contractor or leased employee for a quasi-governmental employer in multiple part-time positions that, if combined, constitute a regular full-time position ~~["regular full-time position"]~~, then the agency[KPPA] shall make a determination of employee or independent contractor status in accordance with Section 3 of this administrative regulation.

Section 3. Determination of Employee or Independent Contractor.

(1) The agency[KPPA] shall have the authority to determine which persons listed on an initial and supplemental Contractor Wizard ~~[Forms 6756, Annual Employer Certification of Non-Contributing Service Providers, should]~~

~~(a) Shall be reported as employees in regular full-time positions; or [and which persons listed on the initial and supplemental Forms 6756, Annual Employer Certification of Non-Contributing Service Providers, are]~~

~~(b) Are independent contractors.~~

(2) In determining whether a person listed on the initial and supplemental Contractor Wizard is an employee of the quasi-governmental employer or an independent contractor of the quasi-governmental employer, the agency:

~~(a) Shall [The KPPA shall] apply common law factors used by the Internal Revenue Service (IRS), in accordance with IRS Publication 1779; and [to determine whether a person listed on the initial and supplemental Forms 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer or an independent contractor of the quasi-governmental employer]~~

~~(b) May consider rules issued by the United States Department of Labor under federal wage and hour law.~~

~~(3)~~

~~[(a)] If the agency[KPPA] determines that a person listed on an initial or supplemental Contractor Wizard ~~[Form 6756, Annual Employer Certification of Non-Contributing Service Providers,]~~ is an employee of the quasi-governmental employer in a regular full-time position, then the quasi-governmental employer shall:~~

~~(a) Remit [remit] all reports, records, contributions, and reimbursements for that person as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140 effective the calendar month after the agency[KPPA] has notified the quasi-governmental employer of its determination in accordance with Section 4 of this administrative regulation; and [.]~~

~~(b) For all periods during which the person was providing services to the quasi-governmental employer, submit:~~

~~1. A valid Form 4225, Verification of Past Employment, for that person; and [If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position, then the quasi-governmental employer shall complete and file at the retirement office a Form 4225, Verification of Past Employment, for that person for all periods during which the person was providing services to the quasi-governmental employer.]~~

~~2. All relevant contracts and other documentation demonstrating the relationship between the quasi-governmental employer and the person. [If the KPPA determines that a person listed on an initial or~~

~~supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position, then the quasi-governmental employer also shall submit all relevant contracts and other documentation demonstrating the relationship between the quasi-governmental employer and the person for all periods during which the person was providing services to the quasi-governmental employer.]~~

~~(4)[(e)] [1.] After reviewing the information from the quasi-governmental employer required by subsection [paragraph] (3)(b) of this section [subsection], if the agency[KPPA] determines that a [the] person listed on an initial or supplemental Contractor Wizard was an employee of the quasi-governmental employer in a regular full-time position for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.543, KRS 61.675, and 105 KAR 1:140, then:~~

~~(a) The [the] person shall be eligible to purchase omitted service in accordance with KRS 61.552(2) for the periods of his or her [their] previous employment by the quasi-governmental employer in a regular full-time position; and~~

~~(b)[2.] The [After reviewing the information from the quasi-governmental employer required by paragraph (b) of this subsection, if the KPPA determines that the person was an employee in a regular full-time position for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.543, KRS 61.675, and 105 KAR 1:140, then the] quasi-governmental employer shall be responsible for payment of delinquent omitted employer contributions in accordance with KRS 61.552(2) and 61.675(3)(b) for all periods of the person's previous employment by the quasi-governmental employer in a regular full-time position.~~

Section 4. Notification to Employers of Determination of Employment Relationship.

~~(1) Each [For the] fiscal year [beginning July 1, 2021, and for each fiscal year thereafter,] quasi-governmental employers shall be notified by the agency[KPPA] of the determination of which persons shall [should] be reported as employees in regular full-time positions no later than September 30 of the subsequent fiscal year.~~

~~(2)~~

~~(a) The agency[KPPA] shall notify the quasi-governmental employer of the determination of which persons listed on an initial or supplemental Contractor Wizard shall [Form 6756, Annual Employer Certification of Non-Contributing Service Providers, should] be reported as employees in regular full-time positions in one (1) notification letter.~~

~~(b) The notification shall be sent to the agency head, appointing authority, or authorized designee, such as the reporting official.~~

~~(c) The notification shall include:~~

~~1. The name of each person who shall [should] be reported as an employee in regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140;~~

~~2. A description of the contract or other documents for [pursuant to which] each person who shall [should] be reported as an employee in a regular full-time position who are providing or have provided services to the quasi-governmental employer; and~~

~~3. A statement that all other persons listed on the initial or supplemental Contractor Wizard shall [Form 6756, Annual Employer Certification of Non-Contributing Service Providers, should] not be reported as employees in regular full-time positions.~~

Section 5. Reporting Exemptions ~~[Contracts for Professional Services That Have Not Historically Been Provided by Employees].~~

~~(1) A person shall meet a reporting exemption if the [quasi-governmental employer shall not be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if:]~~

~~[(a)] [The] person is providing professional services as a core services independent contractor, core services leased employee, or through any other employment arrangement if the person provides services:~~

~~(a) As a non-core services independent contractor or non-core services leased employee;~~

(b) ~~That~~~~[that]~~ have not been performed by direct employees of the quasi-governmental employer since January 1, 2000~~[-]~~ and ~~[(b)]~~ ~~[The professional services]~~ have been ~~[performed]~~ or are being performed for the quasi-governmental employer under a contract ~~on file~~~~[filed]~~ at the retirement office and determined by the ~~agency~~~~[KPPA]~~ or the Kentucky Retirement Systems to represent services provided by an independent contractor~~[-]~~ or~~[-]~~.

~~(c) [(2)] That are~~~~[Quasi-governmental employers may choose to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the person is providing professional services under a contract that have not historically been provided by employees.]~~

~~[Section 6.] [Original Contracts Entered Prior to January 1, 2021.]~~

~~[(1)] [A quasi-governmental employer shall not be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement] under an original contract with the person or a company entered into prior to January 1, 2021 if~~[-]~~ unless one of the exceptions in subsections (2), (3), or (4) of this section applies.]~~

~~1. [(2)] The~~~~[A quasi-governmental employer shall report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021 if the] term of the original contract has not expired, and the contract has not been renewed or continued.]~~

~~2. [(3)] The~~~~[A quasi-governmental employer shall report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021 if the] contract has not been modified to encompass different services; and.]~~

~~3. [(4)] The~~~~[A quasi-governmental employer shall report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with a company entered into prior to January 1, 2021 if the] person was [not] included in the original contract.~~

~~(2) [(5)] [Quasi-governmental employers may choose to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021.]~~

~~(a) When a quasi-governmental employer submits its Contractor Wizard in accordance with subsection (2) of this administrative regulation, it shall also submit the employment contract for people indicated as a reporting exemption, except as provided in paragraph (b)1. of this subsection.~~

~~(b) The agency shall review the contracts and determine if the person meets the requirements of a reporting exemption.~~

~~1. If a person is determined by the agency to meet a reporting exemption, the quasi-governmental employer shall not submit the contract in subsequent fiscal years as long as all terms and conditions of the approved contract remain unchanged.~~

~~2. If a person is determined by the agency to not meet a reporting exemption, the agency shall make a determination of employment status in accordance with Section 3 of this administrative regulation.~~

~~Section 6.~~~~[Section 7.] Report to the State Budget Director's Office and the Legislative Research Commission.~~

~~(1)~~

~~(a) To determine the number of employees of the quasi-governmental employer reported for the prior fiscal year in accordance with KRS 61.5991(3)(a), the agency~~~~[KPPA]~~ shall add together all employees in regular full-time positions reported by the quasi-governmental employer pursuant to KRS 61.675 and 105 KAR 1:140 in the prior fiscal year.

~~(b) Persons listed on an initial or supplemental Contractor Wizard~~~~[Form 6756, Annual Employer Certification of Non-Contributing Service Providers,] for the prior fiscal year who are ultimately determined by the agency~~~~[KPPA]~~ to be employees of the quasi-governmental employer in regular full-time positions shall not be included in the number of employees of the quasi-governmental employer for the prior fiscal year. These persons ~~shall~~~~[may]~~ be included in the number of employees of the quasi-governmental employer ~~in a regular full-time position~~ for a subsequent fiscal year if the person is reported by the quasi-governmental employer in the subsequent fiscal year as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140.

~~(2) To determine the number of persons providing services to the quasi-governmental employer who were not reported for the prior fiscal year in accordance with KRS 61.5991(3)(b), the agency~~~~[KPPA]~~ shall use the total number of persons listed on initial and supplemental ~~Contractor Wizards~~~~[Forms 6756, Annual Employer Certification of Non-Contributing Service Providers,] for the prior fiscal year.~~

~~(3) The agency~~~~[KPPA]~~ shall report the following information for each quasi-governmental employer determined to have falsified data or been noncompliant in accordance with KRS 61.5991(3)(d):

~~(a) The name of the quasi-governmental employer;~~

~~(b) A description of the type of data falsified and the support the agency~~~~[KPPA]~~ has for believing the data to be falsified, if applicable; and

~~(c) A description of the nature of the noncompliance, if applicable.~~

Section 7. Retired Reemployed. A retired member who is reemployed with a quasi-governmental employer providing services through an independent contractor, leased employee, or through any other employment arrangement shall also comply with KRS 61.637, 78.5540, and 105 KAR 1:390, including employees:

(1) In participating positions and non-participating positions; and

(2) Not reported on the Contractor Wizard.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Contractor Wizard", May 2024~~[Form 6756, "Annual Employer Certification of Non-Contributing Service Providers", September 2021];~~

(b) Internal Revenue Service Publication 1779, "Independent Contractor or Employee", March 2023~~[2012]; and]~~

(c) Form 4225, "Verification of Past Employment", March 2024~~[April 2021,] and~~

(d) Form 6756, "Annual Employer Certification of Non-Contributing Service Providers", September 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the agency's~~[Kentucky Public Pensions Authority's]~~ Web site at kyret.ky.gov.

JOHN CHILTON, CEO

APPROVED BY AGENCY: June 25, 2024

FILED WITH LRC: November 8, 2024 at 10:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Tuesday, January 21, 2025, at 10:00 a.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in

writing no later than five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2025. 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: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the Kentucky Public Pensions Authority (KPPA) on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements in accordance with KRS 61.5991 and 61.645(9)(e). In particular, KRS 61.5591(1)(c) authorizes the promulgation of an administrative regulation to implement KRS 61.5991.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates the Contractor Wizard that is required for certain employers to report independent contractors and leased employees. This amendment also updates language used throughout to be consistent with 105 KAR 1:001.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the language used throughout to be consistent with 105 KAR 1:001. Additionally, the amendment is necessary to incorporate the Contractor Wizard that is required for employers to report independent contractors and leased employees.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the authorizing statute by detailing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased

employees, and other persons providing services for the quasi-governmental employer under similar arrangements in accordance with KRS 61.5991 and 61.645(9)(e). In particular, KRS 61.5591(1)(c) authorizes the promulgation of an administrative regulation to implement KRS 61.5991.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by incorporating the Contractor Wizard that is required for certain employers to report independent contractors and leased employees in accordance with KRS 61.5991 and 61.645(9)(e).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for the Kentucky Employees Retirement System: the KPPA. One (1) public pension system: the Kentucky Employees Retirement System. Approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). The number of individuals affected by this administrative regulation is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected quasi-governmental employers will be required to provide the KPPA with information concerning some persons that are providing services for the quasi-governmental employer as independent contractors, leased employees, or through another similar arrangement. If such persons are determined to be employees in regular full-time positions under KRS 61.510(5) and 61.510(21), the affected quasi-governmental employers will be required to prospectively treat the persons as "employees" in accordance with KRS Chapter 61, including reporting employee and employer contributions as required by KRS 61.675 and 105 KAR 1:140. Additionally, in the event of such a determination, the affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675. Finally, the information provided by the KPPA to the state budget director's office and the Legislative Research Commission on the affected quasi-governmental employers may affect subsidies for retirement costs that a quasi-governmental employer may receive pursuant to KRS 61.5991(5) and 61.5991(6).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation for regulated entities is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities are eligible to receive subsidies for retirement costs pursuant to KRS 61.5991(5) and 61.5991(6). (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially: The costs associated with the implementation of this administrative regulation should be minimal.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the KPPA, which will carry out the implementation and enforcement of this regulation pursuant to KRS

61.505 and 61.5991, are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All affected quasi-governmental employers are subject to the same processes and procedures.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.5991 and 61.645.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Public Pensions Authority (KPPA). Affected state units, parts, or divisions include the Kentucky Employees Retirement System.

(a) Estimate the following for the first year:

Expenditures: The effect of this administrative regulation on the expenditures and revenues of state government agencies in the first full year the administrative regulation is to be in effect is unknown.

Revenues: The effect of this administrative regulation on revenues of state government agencies in the first year the administrative regulation is to be in effect is unknown.

Cost Savings: The cost savings to the KPPA to administer this amendment to the administrative regulation in the first year should be minimal.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues, or cost to the KPPA to administer this administrative regulation in subsequent years should be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local government agencies are not affected by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: Local government agencies are not affected by this administrative regulation.

Revenues: Local government agencies are not affected by this administrative regulation.

Cost Savings:

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Local government agencies are not affected by this administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): Additional regulated entities include approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs).

(a) Estimate the following for the first year:

Expenditures: The effect of this administrative regulation on the expenditures and revenues of these regulated agencies in the first full year the administrative regulation is to be in effect is unknown.

Revenues: The effect of this administrative regulation on the expenditures and revenues of these regulated agencies in the first full year the administrative regulation is to be in effect is unknown.

Cost Savings: The effect of this administrative regulation on the cost savings of these regulated agencies in the first full year the administrative regulation is to be in effect is unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues, or cost to the KPPA to administer this administrative regulation in subsequent years should be minimal.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact of this administrative regulation should be negligible because this administrative regulation is already being administered as written with only a change in the method the independent contractors and leased employees are reported.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation is already being administered as written with only a change in the method the independent contractors and leased employees are reported.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse economic impact on regulated entities (quasi-governmental employers), as the regulated entities that comply with this administrative regulation and KRS 61.5991 are eligible to receive subsidies for retirement costs.

(b) The methodology and resources used to reach this conclusion: This regulation is already being administered as written with only a change in the method the independent contractors and leased employees are reported.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:041. Shooting areas, dog training areas, commercial and noncommercial~~commercial~~ foxhound training enclosures, and bobwhite shoot-to-train season.

RELATES TO: KRS 150.010, 150.170, 150.180, 150.280, 150.630, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(28), 150.240(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area or to the entire state. KRS 150.175(28) authorizes the issuance of a special license for residents and nonresidents for the purpose of hunting on licensed shooting areas. KRS 150.240(2) authorizes the department to promulgate administrative regulations governing public or commercial shooting areas. This administrative regulation establishes a bobwhite shoot-to-train season and other requirements to ensure uniform operation of shooting areas, dog training areas, and commercial and noncommercial foxhound training enclosures.

Section 1. Definitions.

(1) "Commercial foxhound training enclosure" means a fenced area where red fox (*Vulpes vulpes*), coyote (*Canis latrans*), or both species are to be held for the purposes of dog training and for which business transactions occur to accumulate compensations, payments, or profits.

(2)[(4)] "Dog training area permit" means a permit that designates an area to allow dog training and shooting of captive-reared bobwhite quail.

(3)[(2)] "Hoofed animal" means ungulate wildlife except wild hogs and javelinas.

(4) "Noncommercial foxhound training enclosure" means a fenced area where red fox (*Vulpes vulpes*), coyote (*Canis latrans*), or both species are to be held for the purposes of dog training but

for which no compensations or payments are received or profits earned in any way.

(5)[(3)] "Shooting area" means a place where animals are held or propagated in captivity and released to be taken by hunters.

Section 2. Seasons.

(1) The dog training area season and the dog training area hunting season shall be year-round for:

- (a) Captive-reared bobwhite quail; and
- (b) Pheasant and chukar, pursuant to 301 KAR 3:030.

(c) Commercial and noncommercial foxhound training enclosures for chase but not to kill red fox or coyote.

(2) The shooting area hunting seasons shall be as follows:

- (a) Bobwhite quail: August 15 through April 15;
- (b) Mallard ducks: year-round;
- (c) Hoofed animals: September 1 through May 15; and
- (d) All other species: the statewide season in effect where the shooting area is located.

(3) The bobwhite shoot-to-train season shall be from August 15 through May 15.

Section 3. Bobwhite Shoot-to-Train Requirements.

(1) A person shall only shoot on private land.

(2) Prior to shooting, a person shall:

(a) Apply on the Bobwhite Quail Shoot-to-Train Application provided by the department;

(b) Submit the completed application to the department;

(c) Possess a valid Kentucky hunting license or be license-exempt pursuant to KRS 150.170;

(d) Possess:

1. Proof of purchase of captive-reared bobwhite quail; or

2. A captive wildlife permit;

(e) Band all captive-reared bobwhite quail with:

1. Aluminum, #7 leg bands; or

2. Department-issued, aluminum leg bands;

(f) Walk and examine the entire area to be hunted to ensure that no wild bobwhite quail are present; and

(g) Release banded birds immediately prior to dog training or shooting.

(3) A person shall contact the department to update an application that is no longer accurate.

(4) The number of leg bands on the dog training or shooting site shall not exceed the number of captive-reared bobwhite present on the site.

(5) A person shall comply with the holding and permit requirements established in 301 KAR 2:081 if:

(a) Captive-reared bobwhite quail are possessed for more than ten (10) days; or

(b) More than 100 captive-reared bobwhite quail are possessed.

Section 4. Permits, Applications, and Transfers.

(1) A person shall obtain a permit from the department before operating the following:

(a) A shooting area for birds;

(b) A dog training area; or

(c) A commercial or noncommercial foxhound training enclosure, except:—

1. A commercial or noncommercial foxhound training enclosure permit shall not be issued after January 1, 2026 for a new enclosure occurring within the Enhanced Rabies Surveillance Zone defined in 301 KAR 2:081.

2. An enclosure within the Enhanced Rabies Surveillance Zone that is permitted prior to January 1, 2026 may remain permitted so long as the permit coverage is continuously maintained.

3. A permitted enclosure within the Enhanced Rabies Surveillance Zone may expand acreage upon existing enclosures but may not create a new, separate enclosure within the Enhanced Rabies Surveillance Zone.

(2) A new shooting area permit shall not be issued for hoofed animals.

(3) The following permits shall be valid from July 1 through June 30:

(a) Dog training area permit;

(b) Shooting area permit for birds; and

(c) Shooting area permit for hoofed animals in existence prior to March 8, 2002.

(4) A commercial or noncommercial foxhound training enclosure permit shall be valid for one (1) year from the date of issuance.

(5) A person shall apply using the appropriate form provided by the department:

(a) Shooting Area Permit Application;

(b) ~~[Commercial—]~~Foxhound Training Enclosure Permit Application and Checklist; or

(c) Dog Training Area Permit Application.

(6) Applications[An application] for [a—]dog training areas[area]and commercial and noncommercial foxhound training enclosures shall not be approved until [a—]department law enforcement personnel[conservation officer— or biologist]inspect[inspects] the area to determine if it meets the requirements established in Sections[Section] 6 and 8 of this administrative regulation.

(7) An applicant for a shooting area, dog training area, or commercial or noncommercial foxhound training enclosure shall provide documentation proving:~~[the applicant is the:]~~

(a) The applicant is the owner[Owner] of the land where the facility is to be located;[or]

(b) The applicant is the lessee[Lessee] of the land where the facility is to be located; and[.]

(c) The acreage meets the requirements of a commercial or noncommercial foxhound training enclosure by providing:

1. A plat that lists the acreage of the commercial or noncommercial foxhound training enclosure boundaries completed by a licensed surveyor; or

2. Aerial imagery to scale with marked boundaries and acreage of the commercial or noncommercial foxhound training enclosure subject to verification by the department.

(8) A commercial or noncommercial foxhound training enclosure within the Enhanced Rabies Surveillance Zone that is permitted prior to January 1, 2026 may be transferred if:

(a) A currently permitted facility is sold to another entity;

(b) The facility is inspected by law enforcement personnel prior to transfer;

(c) The seller of the facility is compliant with the provisions of this administrative regulation; and

(d) The purchaser of the facility:

1. Obtains a commercial or noncommercial foxhound training enclosure permit; and

2. Establishes the acreage meets the minimum requirements of a commercial or noncommercial foxhound training enclosure by providing:

a. A plat that lists the acreage of the commercial or noncommercial foxhound training enclosure boundaries completed by a licensed surveyor; or

b. Aerial imagery to scale with marked boundaries and acreage of the commercial or noncommercial foxhound training enclosure subject to verification by the department.

(9) If ownership or lessee of a commercial or noncommercial foxhound training enclosure changes, the new owner or lessee shall be responsible for applying for a new permit.

(10)[(8)] A shooting area permit shall be transferable if:

(a) A currently permitted facility is sold to another entity;

(b) The facility is inspected by department law enforcement personnel[a conservation officer or biologist] prior to transfer;

(c) The seller of the facility is compliant with the provisions of this administrative regulation; and

(d) The purchaser of the facility:

1. Completes a Shooting Area Permit Transfer Application [provided by the department]; and

2. Provides a plat of the shooting area boundaries completed by a licensed surveyor.

(11)[(9)] A transferred shooting area permit shall only be valid for the land that was permitted prior to the time of transfer.

[(10)] [If ownership of a commercial foxhound training enclosure changes, the new owner shall be responsible for applying for a new permit.]

(12)[(44)] A person hunting on a shooting area shall:

- (a) Possess a valid Kentucky hunting license;
 - (b) Possess a valid shooting area hunting license;
 - (c) Possess a shoot-to-retrieve field trial permit; or
 - (d) Be hunting license exempt pursuant to KRS 150.170.
- ~~(13)~~~~(42)~~ A shooting area hunting license shall be valid for only one (1) specific shooting area.

Section 5. Shooting Area Requirements.

- (1) The boundary of a shooting area shall be marked with signs:
 - (a) At least eight (8) inches by twelve (12) inches;
 - (b) Having a white background with contrasting letters at least one (1) inch high;
 - (c) That read "Shooting Area"; and
 - (d) Placed no more than 500 feet apart.
- (2) A person shall check in at a designated check station or with the operator of a shooting area before hunting.
- (3) A permit holder shall maintain a daily record of people using the area which includes each person's:
 - (a) Name;
 - (b) Address; and
 - (c) Hunting license number.
- (4) A permit holder shall:
 - (a) Obtain a bill of sale or receipt for each purchase that contains the number of:
 - 1. Game birds purchased; or
 - 2. Game bird eggs purchased; and
 - (b) Retain previous year's records and receipts for at least one (1) full year.
- (5) A permit holder shall possess a commercial captive wildlife permit, if applicable, pursuant to 301 KAR 2:081.
- (6) A field trial may be held on a shooting area year-round.

Section 6. Dog Training Area Requirements.

- (1) A dog training area shall be between ten (10) and seventy-five (75) acres in size.
- (2) The dog training area shall:
 - (a) Be contiguous;
 - (b) Consist of at least ninety (90) percent mowed or cut grass no greater than ten (10) inches in height; and
 - (c) Have a marked boundary with signs:
 - 1. At least eight (8) inches by twelve (12) inches high;
 - 2. Having a white background with contrasting letters at least one (1) inch high;
 - 3. That read "Dog Training Area"; and
 - 4. Placed no more than 150 feet apart.
- (3) A permit holder shall maintain a daily record of people using the area which includes each person's:
 - (a) Name;
 - (b) Address; and
 - (c) Hunting license number.
- (4) A permit holder shall retain previous year's records and receipts for at least one (1) full year.
- (5) A person using a dog training area shall possess:
 - (a) A bill of sale or receipt for any bobwhite quail released on the area; and
 - (b) A captive wildlife permit, if applicable, pursuant to 301 KAR 2:081.
- (6) A field trial may be held on a dog training area year-round.

Section 7. Hoofed Animals.

- (1) A shooting area permit holder shall not import or release a hoofed animal.
- (2) A shooting area permit holder who legally holds hoofed animals shall:
 - (a) Keep a record of the:
 - 1. Total number of each hoofed species taken;
 - 2. Name of each hunter;
 - 3. Address of each hunter;
 - 4. Hunting license number of each hunter; and
 - 5. Species taken by each hunter; and
 - (b) Submit to the department all records each month from September through May.

- (3) A permit holder shall not import, possess, release, or hunt any member of the family Suidae.

Section 8. Commercial and Noncommercial Foxhound Training Enclosures.

- (1) A commercial foxhound training enclosure shall:
 - (a) Be at least 200 acres; ~~and~~
 - ~~[(b)] [Be fenced to enclose foxes; and]~~
 - ~~[(b)] [(e)] Not be divided by an interior fence that restricts the range of red fox and coyote [foxes] to less than 200 acres.~~
- ~~(2) A noncommercial foxhound training enclosure shall:~~
 - ~~(a) Be at least 40 acres; and~~
 - ~~(b) Not be divided by an interior fence that restricts the range of red fox and coyote to less than 40 acres.~~
- ~~(3) [(2)] Multiple enclosures of the same type and under the same ownership or management may be listed under the same permit if: [Two (2) or more enclosures under the same ownership or management may be licensed under the same permit if:]~~
 - ~~(a) Each enclosure is at least the minimum acreage required for the permit; and [200 acres in size; and]~~
 - ~~(b) The enclosures share a common fence.~~
- ~~(4) Commercial and noncommercial training enclosures shall:~~
 - ~~(a) Have an exterior fence that completely encloses the commercial or noncommercial foxhound training enclosure and is at least five (5) feet above ground level for its entire length;~~
 - ~~(b) Have a fence consisting of woven wire, chain link, or equivalent strength material capable of preventing escape by red fox and coyote;~~
 - ~~(c) Have at least one (1) strand of electric wire inside at the bottom of the fence capable of preventing red fox and coyote from digging out of or climbing over the fence;~~
 - ~~(d) Have a minimum of twelve (12) inches of additional fence bent inward at a ninety (90) degree angle or at least one (1) strand of electric wire at the top of the fence capable of preventing red fox and coyote from climbing out;~~
 - ~~(e) Have modifications in place at gates, creeks, and similar weaknesses to prevent escape of red fox or coyote; and~~
 - ~~(f) Maintain fences and electric wire to be in working order at all times and free of debris or vegetation that enable red fox or coyote to escape.~~
- ~~(5) [(3)] A commercial or noncommercial foxhound training permit holder shall: [The permit holder shall provide for the foxes:]~~
 - ~~(a) Limit the number of dogs to no more than one (1) dog per two (2) acres for enclosures 100 acres or greater and no more than one (1) dog per three (3) acres for enclosures less than 100 acres.~~
 - ~~(b) Limit the number of red fox and coyote combined to no more than one (1) animal per five (5) acres maximum at any time.~~
 - ~~(c) Only obtain red fox or coyote:~~
 - ~~1. From a licensed trapper who has a noncommercial captive wildlife permit as established in 301 KAR 2:081;~~
 - ~~2. During the furbearer trapping season; and~~
 - ~~3. Within the county of the permitted commercial or noncommercial foxhound training enclosure.~~
 - ~~(d) Quarantine red fox and coyote:~~
 - ~~1. In a separate quarantine enclosure from the training enclosure where animals in quarantine cannot come in contact with free ranging wildlife or red fox and coyote within the training enclosure;~~
 - ~~2. Within a separate quarantine enclosure that meets or exceeds the minimum size requirements for red fox and coyote as specified in 301 KAR 2:081; and~~
 - ~~3. For a minimum of seven (7) days;~~
 - ~~(e) Acclimate newly introduced red fox and coyote within the commercial or noncommercial foxhound training enclosure for a minimum of an additional seven (7) days following quarantine prior to dog training.~~
 - ~~(f) Only release healthy and unaltered red fox and coyote that have not been physically altered in any way into commercial and noncommercial foxhound training enclosures.~~
 - ~~(g) Only maintain red fox and coyote in captivity in a sanitary and safe condition and in a manner that does not result in the maltreatment or neglect of wildlife.~~

(h) Only allow dog training within an enclosure for a maximum of sixteen (16) hours within a twenty-four (24) hour period.

(i) Provide red fox and coyote with the following:

1. A diet that meets the nutritional needs of the animals:

[(a)] Food;

2. [(b)] Clean water;

3. [(c)] Shelter from inclement weather; and

4. [(d)] At least one (1) escape den per forty (40) acres and at least one (1) escape den per red fox or coyote [of the following], which are [is] sufficient to prevent capture of red fox and coyote by dogs as follows: [foxhounds, per every fifty (50) acres:]

a. [1.] Natural den;

b. [2.] Constructed den;

c. [3.] Box; or

d. [4.] Hollow log.

[(4)] [A fox held for release into an enclosure shall be confined pursuant to 301 KAR 2:081.]

(6) [(5)] A person shall not [intentionally] engage in an activity which would cause foxhounds to injure or kill a red fox or coyote in an enclosure at any time.

(7) [(6)] Chasing red fox or coyote in [Fox-chasing on] permitted commercial and noncommercial foxhound training enclosures [areas] shall be considered an authorized field trial and no hunting license shall be required [if a fox is not captured or killed].

[(7)] [A person shall not take any wildlife within an enclosure except under legal statewide seasons and methods.]

(8) The take of any species other than chase of red foxes or coyotes is prohibited within a commercial or noncommercial foxhound training enclosure.

(9) A person shall not possess or release any native or exotic wildlife in a commercial or noncommercial foxhound training enclosure with the exception of red fox and coyote.

(10) A commercial and noncommercial foxhound training enclosure operator shall abide by the following disease prevention and control measures:

(a) Without damaging the head, dispatch diseased or sick acting red fox and coyote, retain carcass, and report to the department veterinarian within twenty-four (24) hours for proper disposition of the carcass;

(b) Report escaped red fox or coyotes to department veterinarian within twenty-four (24) hours; and

(c) Allow the department to inspect a commercial or noncommercial foxhound training enclosure when reportable diseases are suspected or confirmed and take the following actions when necessary.

1. Quarantine and prohibit introduction or removal of red fox and coyote to or from an enclosure until the department determines there is no longer a threat of disease exposure to humans, wildlife, or domestic animals;

2. Dispatch animals for diagnostic testing;

3. Require disinfection of the enclosure by the training enclosure operator; and

4. Examination of records for disease exposure notification.

(11) Permits do not confer ownership, wildlife remains under the stewardship of the Department and may be confiscated, relocated, or euthanized.

(12) Hunting or take of any species other than chase of red fox or coyote is prohibited within a commercial or noncommercial foxhound training enclosure.

(13) [(8)] A commercial or noncommercial foxhound training enclosure owner or operator shall: [The owner or operator of an enclosure shall:]

(a) Allow department law enforcement personnel [a conservation officer] to inspect the facility at any reasonable time; [and]

[(b)] [Comply with all permitting requirements, if applicable, pursuant to 301 KAR 2:081.]

(b) Maintain a registry of names, addresses, phone numbers, and dates hunted for one (1) year of all participants engaging in foxhound training activities or field trials to be provided to department staff upon request for purposes of disease response; and

(c) Maintain the following records and report to the department annually by submitting a Foxhound Training Enclosure Annual Report form:

1. The number of all red foxes and coyotes trapped for release into the enclosure;

2. The name, address, phone number, trapping license number, and noncommercial captive wildlife permit number of the trapper associated with each red fox and coyote;

3. The county of origin for each red fox and coyote;

4. The capture and release dates for each red fox and coyote; and

5. All missing, escaped, or killed red fox and coyote.

(d) Report must be provided to the department within thirty (30) days of the expiration date of the permit.

Section 9. Revocation for Dog Training Area, Shooting Area, and Bobwhite Quail Shoot to Train Permits. [Revocation of Permits.]

(1) Revocation. A person who is convicted of a fish and wildlife violation, including KRS Chapter 150, KAR Title 301, or any federal fish and wildlife laws, shall have his or her permit revoked for a period of one (1) year.

(2) Appeal Procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 10. Permit Denial and Revocation for Commercial and Noncommercial Foxhound Training Enclosures.

(1) Denial. The department shall deny the issuance of a new permit, deny a renewal of an existing or lapsed permit, and may confiscate wildlife of a person who:

(a) Is convicted of a violation of any provisions of:

1. KRS Chapter 150;

2. KAR Title 301; or

3. Any federal statute or regulation related to hunting, fishing, or wildlife;

(b) Provides false information on a commercial or noncommercial foxhound training enclosure permit application, captive wildlife permit application, reports, facility inspection, or records;

(c) Acquires red fox or coyote prior to receiving an approved commercial or noncommercial foxhound training enclosure permit;

(d) Acquires red fox or coyote from an illegal source, location, or outside the legal season;

(e) Fails a facility inspection;

(f) Fails to comply with any provision of this administrative regulation, 301 KAR 2:081, 301 KAR 2:230, or 301 KAR 2:251; or

(g) Is located within the rabies surveillance zone and has previously had their permit revoked.

(2) Facility Inspections.

(a) A permit holder shall allow a game warden to inspect the foxhound training enclosure facilities and property prior to approval of any application and if permitted, at any reasonable time and frequency.

(b) The game warden shall immediately notify the applicant or permit holder and the Wildlife Division director if a facility inspection reveals that the facility is not in compliance with this administrative regulation and shall provide a completed Training Enclosure Inspection form to the appropriate Wildlife Division personnel within three (3) business days.

(c) If an inspection determines that a facility is not in compliance with a KRS Chapter 150 and KAR Title 301, the game warden shall make a second inspection after ten (10) calendar days, and the permit application shall be denied or the permit shall be revoked and all wildlife may be confiscated if the non-compliant conditions have not been corrected.

(3) Revocations.

(a) The department shall revoke the permit and may confiscate wildlife, of a person who:

1. Is convicted of a violation of any provisions of:

a. KRS Chapter 150;

b. KAR Title 301; or

c. Any federal statute or regulation related to hunting, fishing, or wildlife;

2. Provides false information on a commercial or noncommercial foxhound training enclosure permit application, captive wildlife permit application, reports, facility inspection, or records;

3. Acquires red fox or coyote prior to receiving an approved commercial or noncommercial foxhound training enclosure or captive wildlife permit;

4. Acquires red fox or coyote from an illegal source, location, or outside the legal season;

5. Fails a second facility inspection; or

6. Fails to comply with any provision of this administrative regulation, 301 KAR 2:081, 301 KAR 2:230, or 301 KAR 2:251.

(b) If a person's commercial or noncommercial foxhound training enclosure is revoked for one (1) enclosure, permits for all other enclosures in their name shall be revoked and the enclosures may not be permitted for the applicable denial period.

(c) A fee shall not be refunded for a permit that is revoked.

(4) Denial period. An applicant for a commercial or noncommercial foxhound training enclosure permit or captive wildlife permit that has been revoked or denied for the grounds established in this section shall be ineligible to reapply, and all applications denied:

(a) Permanently for commercial and noncommercial foxhound training enclosures within the rabies surveillance zone; and

(b) For commercial and noncommercial foxhound training enclosures outside the rabies surveillance zone:

1. The initial denial period, for one (1) year;

2. A second denial period, for three (3) years; and

3. A third or subsequent denial period, for five (5) years.

(5) Confiscated wildlife.

(a) All red fox and coyote may be confiscated if a commercial and noncommercial foxhound training enclosure permit is revoked or denied or if a person possesses red fox or coyote without a valid commercial or noncommercial foxhound training enclosure permit.

(b) Confiscated wildlife shall be released, transferred, or dispatched as ordered by the department.

(c) Wildlife shall not be returned to the person, entity, or facility from which they were confiscated.

(d) Wildlife shall be surrendered to the department, for processing and disposition pursuant to this administrative regulation, upon being presented with a written order by the commissioner.

(6) Administrative hearings.

(a) An individual whose permit has been denied or revoked may request an administrative hearing, which shall be conducted pursuant to KRS Chapter 13B.

(b) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or the revocation.

(c) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(d) The hearing officer's recommended order shall be considered by the commissioner, and the commissioner shall issue a final order, pursuant to KRS Chapter 13B.

Section 11.[Section 40:] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Bobwhite Quail Shoot-to-Train Application", July 2012 edition.

(b) "Dog Training Area Permit Application", July 2012 edition;

(c) "Foxhound Training Enclosure Permit Application and Checklist", 2024 edition;

(d) "Foxhound Training Enclosure Permit Annual Report", 2024 edition;

(e) "Shooting Area Permit Application", July 2012 edition; and

(f) "Shooting Area Permit Transfer Application", July 2012 edition.

[(a)] ["Shooting Area Permit Application", July 2012 edition;]

[(b)] ["Commercial Foxhound Training Enclosure Permit Application", July 2012 edition;]

[(c)] ["Dog Training Area Permit Application", July 2012 edition;]

[(d)] ["Shooting Area Permit Transfer Application", July 2012 edition; and]

[(e)] ["Bobwhite Quail Shoot-to-Train Application", July 2012 edition;]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or online at:

(a) <https://fw.ky.gov/Licenses/Documents/CommercialFoxhoundTrainingApp2024.pdf> for the "Foxhound Training Enclosure Permit Application and Checklist";

(b) <https://fw.ky.gov/Licenses/Documents/CommercialFoxhoundTrainingAnnualReport2024.pdf> for the "Foxhound Training Enclosure Permit Annual Report".

RICH STORM, Commissioner

APPROVED BY AGENCY: November 14, 2024

FILED WITH LRC: November 15, 2024 at 11:25 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 30 at 10:00 a.m., at KDFWR Headquarters, 1 Sportsman's Lane, Frankfort KY, 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 January 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a bobwhite shoot-to-train season and requirements to regulate the operation of shooting areas, dog training areas, and commercial and noncommercial foxhound training enclosures. This administrative regulation establishes requirements for the possession, holding, commercial activity, and transportation of red fox and coyote for foxhound training enclosures.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a defined process for the permitting, holding, and transportation of wildlife used during shoot-to-train season, shooting areas, dog training areas, and commercial and noncommercial foxhound training enclosures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area or to the entire state. KRS 150.175(28) authorizes the issuance of a special license for residents and nonresidents for the purpose of hunting on licensed shooting areas. KRS 150.240(2) authorizes the department to promulgate administrative regulations governing public or commercial shooting areas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for applying for and receiving permits to possess native wildlife and establishes requirements for shoot-to-train season, shooting areas, dog training areas, and commercial and noncommercial foxhound training enclosures.

(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: These amendments will establish requirements for species and number of animals that may be maintained within foxhound training enclosures, the possession and transport of red fox and coyotes, fencing to maintain red fox and coyote within foxhound training enclosures, size of enclosures, quarantine and disease response, record keeping and reporting, and permitting and enforcement.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to establish requirements for commercial and noncommercial foxhound training enclosures and the possession of red foxes and coyotes for dog training purposes.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above. This amendment falls within the reach of the authorizing statute KRS 150.025 (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately ten permitted foxhound training enclosures. These amendments will allow individuals owning or leasing between 40 and 200 acres to apply for foxhound training enclosure permits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals will need to comply with commercial and noncommercial foxhound training enclosure requirements and obtain a permit prior to engaging in foxhound training activities or possession of red fox or coyote.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be a cost to individuals to build enclosures that meet the requirements of the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals will be able to engage in foxhound training activities within an enclosed area with the proper permits.

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

(a) Initially: There will be no initial administrative cost to the department to implement this administrative regulation beyond staff time to review permit applications, issue permits, and enforcement.

(b) On a continuing basis: There will be no cost to the department on a continuing basis beyond reviewing permit applications, issuing permits, and enforcement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: An annual permit fee of \$25 will be charged for a noncommercial foxhound training enclosure permit, however, individuals will no longer be required to pay a \$75 fee every three years for a captive wildlife permit.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all permit holders within each permit type are treated equally.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area or to the entire state. KRS 150.175(28) authorizes the issuance of a special license for residents and nonresidents for the

purpose of hunting on licensed shooting areas. KRS 150.240(2) authorizes the department to promulgate administrative regulations governing public or commercial shooting areas.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Department of Fish and Wildlife Resources will be impacted by this amendment in terms of staff time to review applications, issue permits, and enforce regulations.

(a) Estimate the following for the first year:

Expenditures: n/a

Revenues: \$25 per noncommercial permit issued (estimated less than 50)

Cost Savings: n/a

(b) How will expenditures, revenues, or cost savings differ in subsequent years? \$25 per noncommercial permit issued (estimated less than 20 per year)

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): 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? No revenue will be generated by this administrative regulation for local entities.

(4) Identify additional regulated entities not listed in questions (2) or (3):

(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? No revenue will be generated by this administrative regulation for other entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation has minimal fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: There will be no additional costs to administer 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 regulation will not have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate), considering the \$25 permit application fee and no substantial increase in time for issuing permits and enforcement.

(b) The methodology and resources used to reach this conclusion: There will be no additional costs to administer this regulation.

JUSTICE AND PUBLIC SAFETY CABINET Department of Kentucky State Police (Amendment)

502 KAR 10:120. Hazardous materials endorsement requirements.

RELATES TO: KRS 281A.120, 281A.130, 281A.150, 281A.160, 281A.170, 49 U.S.C. 5103a, 49 C.F.R. Parts 383, 1515, 1572

STATUTORY AUTHORITY: KRS 281A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate administrative regulations to reasonably carry out the provisions of KRS Chapter 281A. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining or renewing a hazardous materials endorsement for a commercial driver's license. This administrative regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

Section 1. Definitions.

- (1) "CDL" or "Commercial Driver's License" is defined by KRS 281A.010(5) and 49 C.F.R. 383.5.
- (2) "CDL testing location" means the department's regional CDL testing offices.
- (3) "Determination of no security threat" is defined by 49 C.F.R. 1572.15(d)(1).
- (4) "DOT" means the federal Department of Transportation.
- (5) "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(4).
- (6) "HME" means hazardous materials endorsement.
- (7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(2).
- (8) "KSP" means the Kentucky State Police.
- (9) "Proper identification" means:
 - (a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or
 - (b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee, or refugee status.
- (10) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME.

- (1) An applicant applying for a hazardous materials endorsement shall first obtain a commercial driver's instruction permit or CDL prior to requesting a security threat assessment from the TSA. The applicant shall submit application information in accordance with 49 C.F.R. 1572.9. The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.
- (2) To begin the process, an applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.
- (3) An applicant shall bring proper identification, and a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652.
- (4) An applicant shall pay a \$115 fee for a fingerprint-based background check until December 1, 2024. Beginning December 2, 2024, an applicant shall pay a \$138.25 fee for a fingerprint-based background check. The fee may be paid by:
 - (a) Certified check;
 - (b) Cashier's check;
 - (c) Money order; or
 - (d) Electronically before the appointment at https://secure.kentucky.gov/formservices/KSP/hazmat_FP.
- (5) An applicant shall be fingerprinted by KSP at a regional CDL testing location. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the biographical information sheet to the TSA.
- (6) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the applicant shall be notified by the Transportation Cabinet that he or she is eligible [to take the knowledge test required to qualify for the HME.
- (7) If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the applicant shall not be issued a HME. The applicant may appeal the TSA's determination in accordance with 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from the TSA in accordance with 49 C.F.R. 1515.7.
- (8) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications for HME.

- (1) The Transportation Cabinet shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.

(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.

(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655. A renewal applicant shall submit to fingerprinting and further complete the "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.

(4) A renewal applicant shall bring to the appointment proper identification, a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027.

(5) A renewal applicant shall pay a \$115 fee for a fingerprint-based background check until December 1, 2024. Beginning December 2, 2024, a renewal applicant shall pay a \$138.25 fee for a fingerprint-based background check. The fee may be paid by:

- (a) Certified check;
- (b) Cashier's check;
- (c) Money order; or
- (d) Electronically before the appointment at https://secure.kentucky.gov/formservices/KSP/Hazmat_FP.

(6) A renewal applicant shall be fingerprinted by KSP at a regional CDL testing location. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.

(7) If the Commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the Transportation Cabinet may extend the expiration date of the HME for a period of up to ninety (90) days. Any additional extension shall be approved by TSA.

(8) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified by the Transportation Cabinet that he or she is eligible [to take the knowledge test required to qualify for the HME.

(9) If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the renewal applicant shall not be issued a HME. The renewal applicant may appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the renewal applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with 49 C.F.R. 1515.7.

(10) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

(11) An applicant who has received a passing score on the HME test and is applying for a Class C CDL with a hazardous materials endorsement shall drive a Class C placarded vehicle for the skills test.

Section 4. Transfer Applications For HME. [(4)] In accordance with 49 C.F.R. 1572.13(e), an applicant who applies to transfer an existing HME from another state to the Commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

COL. PHILLIP BURNETT, JR, Commissioner

APPROVED BY AGENCY: October 28, 2024

FILED WITH LRC: October 30, 2024 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2025, at 9:00 a.m., at Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent

to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goens, Staff Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the necessary procedures for conducting fingerprint criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

(b) The necessity of this administrative regulation: This regulation is necessary to carry out the provisions of KRS 281A.040 and the federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 281A.040 and the applicable federal regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in the administration of the statutes by clarifying the statutory authority and the initial application and renewal procedures for a Hazardous Materials Endorsement.

(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 increases the total amount of the fee collected from HME applicants at the time of application.

(b) The necessity of the amendment to this administrative regulation: The increase in the total amount of the fee is necessary because the portion collected by the Traffic Safety Administration (TSA) to conduct their Threat Assessment was increased from \$34.00 to \$57.25 per application as published in the Notice to the Federal Register 2024-19412 (89FR 70201) on August 29, 2024.

(c) How the amendment conforms to the content of the authorizing statutes: The federal regulation directs that a state must collect TSA's Threat Assessment fee from the applicant at the time of application.

(d) How the amendment will assist in the effective administration of the statutes: This increase ensures the fee collected by Kentucky State Police on behalf of TSA recovers TSA's costs to process the HME applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, applicants for Hazardous Material Endorsement, Transportation Security Administration.

(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: Kentucky State Police will not be impacted. The TSA will receive the increased fee in compliance with the Notice to the Federal Register. Applicants will pay the increased fee.

(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 to Kentucky State Police. TSA will collect approximately \$54,637 additional fees per year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): TSA will recover the cost of processing HME applications.

(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: Not applicable

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This fee increase is imposed by the Transportation Security Administration. No additional fee or funding is necessary for Kentucky State Police to implement the increased TSA fee.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation directly increases the application fee. The increase is imposed by the Transportation Security Administration and announced in the Notice to Federal Register 2024-19412 (89FR 70201) on August 29, 2024.

(9) TIERING: Is tiering applied? No. Tiering is not appropriate in this administrative regulation because it applies equally to all those 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 281A.040, 49 U.S.C. 5103a, 49 C.F.R. Parts 343, 1515, 1572

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department of Kentucky State Police

(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? Expenditures, revenues, and cost savings will not be impacted.

(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? Expenditures, revenues, and cost savings will not be impacted.

(4) Identify additional regulated entities not listed in questions (2) or (3): Transportation Security Administration

(a) Estimate the following for the first year:

Expenditures: None

Revenues: \$54,637.50

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The number of applicants determines the impact to revenues for the Transportation Security Administration.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Applicant fees increase by \$23.25. The increase is passed through to the Transportation Security Administration in accordance with 49 C.F.R. 1572.

(b) Methodology and resources used to determine the fiscal impact: The fee increase is directed by federal regulation as announced in the Notice to Federal Register 2024-19412 (89FR 70201) on August 29, 2024.

(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 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 average annual number of applicants for a hazardous materials endorsement the last 24 months, multiplied by the amount of the fee increase is \$54,637.50.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 6 U.S.C. 469, 49 C.F.R. 1503 and 1572

(2) State compliance standards. KRS 281A.040

(3) Minimum or uniform standards contained in the federal mandate. Under 49 U.S.C. 5103a, a state is prohibited from issuing or renewing a hazardous materials endorsement for a commercial driver's license unless the Transportation Security Administration has first determined that the driver does not pose a security threat. To make this security determination, TSA conducts a Standardized Threat Assessment by comparing applicant biographic and biometric information to criminal, immigration, and security databases, and adjudicating any derogatory information against the standards set forth in 49 C.F.R. 1572. TSA is required to recover its vetting program costs through user fees, in accordance with 6 U.S.C. 469. Under TSA's regulations, Kentucky collects and transmits fingerprint and applicant information and fees from applicants for new or renewed hazardous materials endorsements.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

JUSTICE AND PUBLIC SAFETY CABINET Department of Kentucky State Police (Amendment)

502 KAR 12:010. Sexual assault forensic-medical examination protocol.

RELATES TO: KRS 15A.160, 16.132, Chapter 49, 72.020, 209.020(4), 209.030, 209A.020, [209A.030,]209A.100, 209A.110, 209A.130, 211.600, 216B.015(27), 216B.400, 216B.990(3), 314.011(14), 403.707, [421.570, 510.010-510.140, 524.140, 529.010(2), 529.010(13), 529.100, 530.020, 530.064(1)(a), 531.310, 600.020, 620.030, 34 U.S.C. 10449, 45 C.F.R. 164.512

STATUTORY AUTHORITY: KRS 15A.160, 216B.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the Justice and Public Safety Cabinet to promulgate administrative regulations for the administration of all laws and functions which are vested in the cabinet, except laws and functions vested in the Department of Public Advocacy. KRS[] 216B.400 requires the cabinet to promulgate administrative regulations developing a statewide medical protocol for sexual assault examinations. This administrative regulation establishes the procedures to be followed by medical staff before, during, and after the examination of a victim of a sexual assault.

Section 1. Definitions.

(1) "Basic treatment" means basic medical care provided to victims of sexual offenses, including a medical screening, an examination for medical injuries, treatment for sexually transmitted infections, and, if appropriate, delivery of postexposure HIV prophylaxis.

(2) "Designated storage facility" means an examination facility, local law enforcement agency, or other agency that has an agreement with an examination facility to provide secure storage for samples collected during sexual assault forensic-medical examinations that are not immediately reported to law enforcement.

(3) "Examination Facility" means a sexual assault examination facility as defined in KRS 216B.015(27).

(4) "Qualified medical professional" means any physician's assistant or advanced practice registered nurse whose training and scope of practice include performance of speculum examinations.

(5) "Rape crisis center advocate" means a victim advocate who:

(a) Has met the requirements of KRS 421.570; and

(b) Works or volunteers for a rape crisis center regulated by the Cabinet for Health and Family Services, pursuant to KRS 211.600 and 922 KAR 8:010.[]

(6) "Victim" means a person who may have suffered direct, threatened, or attempted physical or emotional harm from the commission or attempted commission of:

(a) A sexual offense, pursuant to KRS 510.010 to 510.140;

(b) Incest, pursuant to KRS 530.020; or

(c) An offense relating to:

1. The use of a minor in a sexual performance, pursuant to KRS 531.310;

2. An unlawful transaction with a minor, pursuant to KRS 530.064(1)(a); or

3. Human trafficking for commercial sexual activity, pursuant to KRS 529.010(2), 529.010(13), and 529.100.

Section 2. Preforensic-Medical Examination Procedure. If a person seeking treatment as a victim arrives at an examination facility, the appropriate staff at the facility prior to conducting the forensic-medical examination shall comply with the following requirements:[]

(1) Reporting to the Rape Crisis Center Advocate. The examination facility staff shall:

(a) Contact the rape crisis center to inform the on call advocate that a victim has arrived at the examination facility for an examination; and

(b) Upon arrival of the advocate, ask if the victim wishes to have a rape crisis center advocate present for the examination or otherwise available for consultation.

(2) Limited Mandatory Reporting to the Cabinet for Health and Family Services.

(a) If the victim is less than eighteen (18) years old, the examination facility [staff.]shall:

1. Assess whether the victim may be an abused, neglected, or dependent child, as defined in KRS 600.020. If child abuse, neglect, or dependency is suspected, medical personnel shall immediately report the incident to the Cabinet for Health and Family Services, a local or state law enforcement agency, or the Commonwealth's attorney or county attorney in accordance with KRS 620.030; and

2. If a report is made, consult with the Cabinet for Health and Family Services or law enforcement to determine whether referral to a regional children's advocacy center or other specialized treatment facility is in the best interest of the child.

(b) If the victim is eighteen (18) years old or older, the examination facility staff shall:

1. Not contact law enforcement or release any information to law enforcement without the victim's authorization.

2. If the victim may be an adult as defined in KRS 209.020(4), immediately report the incident to the Cabinet for Health and Family Services and notify the victim of the report.

(3) Optional Reporting to Law Enforcement. The examination facility staff shall:

(a) Ask if the victim wants to report the incident to law enforcement.[]

(b) If the victim chooses to report the incident to law enforcement, obtain the victim's consent for treatment and authorization for release of information, and contact law enforcement; and

(c) If the victim chooses not to report to law enforcement, keep information or samples from release to law enforcement, unless the victim has specifically authorized the release of information or samples.

(4) Mandatory Reporting to Law Enforcement. Any professional, as defined by KRS 209A.020, who learns of the death of a victim with whom he or she had a professional interaction, shall immediately notify law enforcement if the professional believes domestic or dating violence or abuse caused, contributed, or is related to the victim's death, in accordance with KRS 209A.110.

(5) Examination facility staff shall:

(a) Inform the victim that all statements made during the interview and the sample collection process to physicians, nurses, or other hospital personnel, or law enforcement officers are not privileged and may be disclosed;

(b) Provide a detailed explanation of the forensic-medical examination, the reasons for conducting the forensic-medical examination, and the effect on a criminal prosecution if a forensic examination is not performed or reported to law enforcement;

(c) Advise the victim that photographs and other documentation, if released to law enforcement, may be used as evidence and that the photographs may include the genitalia;

(d) Advise the victim that the forensic-medical examination, including basic treatment, shall be conducted free of charge, but costs related to additional medical treatment may be incurred.[:]

(e) Inform the victim that consent for the forensic sample collection process may be withdrawn at any time during the examination;

(f) Inform the victim of the need for a physical examination due to the risk of sexually transmitted infections, including HIV, pregnancy, injury, or other medical problems whether or not the victim chooses to have the evidence collected;

(g) Obtain documented consent from the victim prior to conducting the forensic-medical examination; and

(h) Document that the procedures established in this section are completed.

Section 3. The Forensic-Medical Examination.

(1) A physical examination may be conducted for basic treatment and to collect samples in all cases of sexual assault, regardless of the length of time that may have elapsed between the time of the assault and the examination itself.

(2) If the reporting patient is a child, examination facility staff shall refer to the "Kentucky Medical Protocol for Child Sexual Assault/Abuse Evaluation" developed by the Sexual Assault Response Team Advisory Committee for guidance in conducting the forensic evidence team[exam].

(3) If the sexual assault occurred within ninety-six (96) hours prior to the forensic-medical examination, a Kentucky State Police Sexual Assault Evidence Collection Kit shall be used. The examination facility shall enter the kit information into the sexual assault forensic evidence kit tracking portal, as prescribed by KRS 16.132.

(4) Personnel in attendance during the forensic examination shall be limited to the following persons:

(a) Examining physician, sexual assault nurse examiner, as defined in KRS 314.011(14), or qualified medical professional;

(b) Attending nurse and additional nursing personnel;

(c) Rape crisis center advocate; and

(d) Other persons who are:

1. Dictated by the health needs of the victim; or

2. Requested by the victim.

(5) Photographs, including photographs of the genitalia, may be taken if the appropriate equipment is available at the examination facility, precautions are taken to ensure confidential storage, and the victim has consented to having photographs taken.

(6) The following types of samples may be collected during the examination:

(a) Hairs from the head or public[pubic] region;

(b) Fingernail cuttings, swabs, or scrapings;

(c) Clothing fibers, or other trace evidence;

(d) Bodily fluids, including[:]

1. Semen;

2. Blood;

3. Sweat; and

4. Saliva;

(e) Clothing; and

(f) Other samples that may be presented as evidence at a trial.

(7) Samples shall not be collected if the victim is unconscious unless the collection is consistent with appropriate and necessary medical treatment.

(8) The collection of samples shall cease immediately if the victim dies during the process.

(9) The coroner shall be contacted if the victim dies during the sexual assault medical-forensic examination, and the samples processed and the evidence collected up to that time shall be delivered to the coroner or the coroner's designee. Collection of

samples may be completed by medical personnel if requested by the coroner.

(10) The coroner shall be notified in accordance with KRS 72.020 and samples shall not be collected if the victim is deceased upon arrival at the examination facility.

Section 4. Postforensic Examination Procedures. At the conclusion of the forensic-medical examination the appropriate personnel at the examination facility shall provide the victim with:

(1) Information regarding follow-up procedures and appointments concerning:

(a) Sexual[Sexually] transmitted infections, including HIV;

(b) Pregnancy;

(c) Urinary tract or other infections; and

(d) Similar assault related health conditions;

(2) Information regarding the availability of follow-up counseling and support services available from a rape crisis center or other mental health agency;

(3) Information from the law enforcement officer regarding who to contact about the prosecution of the offense in cases reported to law enforcement;

(4) A garment or other appropriate closing[clothing] to wear in leaving the examination facility, or assistance in obtaining other personal closing[clothing];

(5) Information about:

(a) The Office of Claims and Appeals[], as established in KRS Chapter 49; and

(b) The following administrative regulations providing aid to a crime victim:

1. 802 KAR 3:010;

2. 802 KAR 3:020;[] and

(6) The appropriate educational materials, as described in KRS 209A.130, if it has been determined that the patient may be a victim of dating or domestic violence and abuse, as defined in KRS 209A.020.

(7) If the victim chooses not to report to law enforcement, information about:

(a) Length of time samples will be stored;

(b) Whom the victim may contact to file a report or authorize the release of samples; and

(c) Whether the samples will be automatically destroyed or transferred for extended storage if the victim does not request release of samples to law enforcement within the specified period.

Section 5. Storage and Transfer of Samples.

(1) Chain of custody documentation shall be maintained throughout all storage and transfer procedures.

(2) All samples shall be stored under circumstances that restrict access to reduce the likelihood of tampering and protect the chain of custody. The number of individuals with access to the storage area shall be limited to the minimum number possible.

(3) The following information shall be maintained for each sample stored:

(a) Patient identifier;

(b) Date collected;

(c) Description of sample;

(d) Signature of the collecting medical professional;

(e) Date and time entered into storage and signature of person receiving; and

(f) Date and time removed from storage, signature of person removing, and purpose of removal.

(4) If the victim chooses to report the incident to law enforcement as a crime or has authorized the release of samples to local law enforcement for secure storage, the appropriate law enforcement agency shall be notified of the report within twenty-four (24) hours of the examination. The examination facility shall transfer samples to local law enforcement officials within five (5) days.

(5) Law enforcement officials shall comply with the storage requirements prescribed within KRS 524.140.

(6) Law enforcement officials shall submit the kit for analysis to the Kentucky State Police Forensics Laboratories within thirty (30) days.

(7) If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, the examination facility shall arrange for the samples to be stored securely for at least a period of one (1) year. An agency that elects to maintain custody of an unreported kit shall continue to maintain custody of the kit for at least one (1) year from the collection date.

(8) The examination facility may either store samples or transfer samples to a designated storage facility.

(9) The examination facility shall maintain documentation regarding ~~transfer~~[transfers] of the samples.

(10) Facilities or agencies ~~procuring~~[providing] secure storage of samples under this section shall assure compliance with this section and ensure that samples are stored within a locked or otherwise secure container in a limited-access location.

(11) Storage agreements:

(a) May be long-term or case specific; and

(b) Shall designate sending and receiving facilities and certify compliance with subsections (1) through (9) of this section.

(12) If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, samples shall not be released to a law enforcement agency, except if:

(a) The local law enforcement agency receiving samples has entered into an agreement to serve as a designated storage facility;

(b) The victim later chooses to file a delayed report; or

(c) Pursuant to a court order.

Section 6. Removal of Samples from Secure Storage. Samples shall not be permanently removed from storage except if:

(1) The victim authorizes release of samples to a law enforcement agency or other entity;

(2) The time frame for storage has lapsed, as established by Section 5(g)(6) of this administrative regulation;

(3) The victim authorizes the destruction of the samples; or

(4) A court order has been issued for release or destruction.

Section 7. Destruction of Samples.

(1) One (1) [year] after the sample was collected, the examination facility or designated storage facility may destroy the sample at any time in accordance with ~~that~~[the] facility's policy.

(2) Destruction shall be conducted using biohazard precautions.

(3) Destruction shall be documented by the examination facility or designated storage facility that stored the samples.

(4) Samples may be destroyed upon [the] request of a victim. The victim's request for destruction shall be documented by the examination facility and designated storage facility, if used.

Section 8. Incorporation by Reference.

(1) Sexual Assault Response Advisory Committee Guidance "Kentucky Medical Protocol for Child Sexual Assault-Abuse Evaluation", 2024[2024] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Association of Sexual Assault Programs, Inc., 83 C.[83-C] Michael Davenport Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Children's Advocacy Centers of Kentucky Web site at <https://cackkentucky.org/>.

CHAD WHITE, Deputy Commissioner

For COL. PHILLIP BURNETT, JR, Commissioner

MISSIE QUILLEN, Executive Director

APPROVED BY AGENCY: October 16, 2024

FILED WITH LRC: October 28, 2024

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 9:00 a.m., at Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be

accepted through December 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: Nathan Goens, Staff Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the necessary procedures to be followed by medical staff prior to, during, and after the examination of a sexual assault victim.

(b) The necessity of this administrative regulation: This regulation authorizes the cabinet to develop a statewide medical protocol for sexual assault or abuse examinations; this regulation is necessary to explain the processes of that protocol.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statutes by developing the processes necessary for the statewide medical protocol for sexual assault examinations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the procedures to be followed by medical staff, and further assists in assuring 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: This amendment updates the material incorporated by reference: the "Kentucky Medical Protocol for Child Sexual Assault-Abuse Evaluation" as revised by the Sexual Assault Response Advisory Committee in 2024.

(b) The necessity of the amendment to this administrative regulation: The amendment is required to reflect the guidance adopted by the Sexual Assault Response Advisory Committee and to ensure statewide compliance with the protocol to protect child victims of sexual assault or abuse.

(c) How the amendment conforms to the content of the authorizing statutes: The Sexual Assault Response Advisory Committee is tasked with establishing the model protocol for operation of sexual assault response teams which shall include the roles of sexual assault nurse examiners and physicians.

(d) How the amendment will assist in the effective administration of the statutes: The amendment adopts the updated "Kentucky Medical Protocol for Child Sexual Assault-Abuse Evaluation" as revised by the Sexual Assault Response Advisory Committee in 2024.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Sexual assault examination facilities, qualified medical professionals, and child victims of sexual assault or abuse.

(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 current standard of care in medical examination settings is that medical clearance in conjunction with an examination by a sexual assault nurse examiner-pediatric/adolescent (SANE-P/A) provider is already occurring. There are no additional steps the regulated entities will have to take to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The protocol will clearly reflect the mandatory nature of medical clearance in support of current practice and statutory requirements.

(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: Not applicable.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding to implement this amendment.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase fees, directly or indirectly.
- (9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because it applies equally to all those 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 216B.400, 403.707
- (2) Identify the promulgating agency and any other affected state units, parts, or divisions: Justice and Public Safety Cabinet, Department of Kentucky State Police.
 - (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? Not applicable
- (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? Not applicable
- (4) Identify additional regulated entities not listed in questions (2) or (3): Qualified medical professionals, sexual assault examination facilities
 - (a) Estimate the following for the first year:
 - Expenditures: Nothing
 - Revenues: Nothing
 - Cost Savings: Nothing
 - (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: In current practice, medical clearance is already the standard of care in settings where sexual assault nurse examiner – pediatric/adolescent (SANE-P/A) examinations occur. There is no additional examination or fiscal impact.
 - (b) Methodology and resources used to determine the fiscal impact: KRS 216B.400 already includes language that every examination facility in Kentucky which offers emergency services shall have qualified medical professionals on call for the examination of persons seeking treatment as victims of sexual assault offenses. The examinations provided shall include "basic treatment." The language applies regardless of age of the person seeking treatment. Medical providers indicate that providing medical clearance in conjunction with SANE-P/A examinations is a routine part of current care practices.
 - (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

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health, Life, Managed Care
(Amendment)

806 KAR 9:360. Pharmacy Benefit Manager License.

RELATES TO: KRS 14A.4-010, 304.1-050, 304.2-290, 304.2-310, 304.9-020, 304.9-053, 304.9-054, 304.9-055, 304.9-133, 304.10-030, 304.10-040, 304.17A-005, 304.17A-162, 304.17A-163, 304.17A-165, [304.17A-440], 304.17A-535, 304.17A-607, 304.17A-617-304.17A-633, 304.99-020, 45 C.F.R. 156.122

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-053(2), 304.9-054(3)(6), 304.9-054(4), 304.9-055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner [~~of Insurance~~] to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of [~~any provision of~~] the Kentucky Insurance Code as defined in 304.1-010. KRS 304.9-053(2) requires a pharmacy benefit manager seeking a license to apply to the commissioner in writing on a form provided by the department. KRS 304.9-054(3)(6) requires the department to promulgate administrative regulations to implement and enforce the provisions of KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-162. 304.9-054(4) permits the department to impose a fee upon pharmacy benefit managers, in addition to a license fee, to cover the costs of implementation and enforcement of 205.647 and any provision of KRS Chapter 304 applicable to pharmacy benefit managers, including but not limited to this section and 304.9-053, 304.9-055, and 304.17A-162. This administrative regulation establishes requirements for the licensure of pharmacy benefit managers.

Section 1. Definitions.

- (1) "Admitted insurer" is defined by KRS 304.10-030(1).
- (2) "Commissioner" is defined by KRS 304.1-050(1).
- (3) "Department" is defined by KRS 304.1-050(2).
- (4) "Nonadmitted insurer" is defined by KRS 304.10-030(8).
- (5) "Pharmacy benefit manager" is defined by KRS 304.9-020(15).

Section 2. Initial License and Renewal.

- (1) An applicant for a pharmacy benefit manager license or renewal license from the commissioner shall submit the following to the department in the format as outlined in the instructions on the Pharmacy Benefit Manager License Application:
 - (a) Form PBM, The Pharmacy Benefit Manager License Application;
 - (b) The fee set forth in KRS 304.9-053(3) and the penalty fee, if applicable, set forth in KRS 304.9-053(4)(5);
 - (c) The following evidence of financial responsibility:
 - 1. A certificate of insurance from either an admitted insurer or a nonadmitted insurer, in accordance with KRS 304.10-040, stating that the insurer has and will keep in effect on behalf of the pharmacy benefit manager a policy of insurance covering the legal liability of the licensed pharmacy benefit manager's erroneous acts or failure to act in its capacity as a pharmacy benefit manager, and payable to the benefit of any aggrieved party in the sum of not less than \$1,000,000; or
 - 2. A cash surety bond issued by a corporate surety authorized to issue surety bonds in this commonwealth, in the sum of \$1,000,000, which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable;
 - (d) The name of at least one (1) responsible individual who shall be responsible for the pharmacy benefit manager's compliance with KRS Chapter 304 and KAR Title 806 and who is:
 - 1. Licensed as an administrator in Kentucky; and
 - 2. Designated in accordance with KRS 304.9-133;
 - (e) If performing utilization review in accordance with KRS 304.17A-607, the pharmacy benefit manager's utilization review registration number;

(f) The following written policies and procedures to be used by the pharmacy benefit manager:

1. An appeals process for any pricing system used to determine the cost of a generic drug required by KRS 304.17A-162;
2. Exceptions policy required by 45 C.F.R. 156.122(c) and KRS 304.17A-535(4); and

3. Pharmacy and Therapeutics committee membership standards and duties required by 45 C.F.R. 156.122(a);

(g) Proof of a registered agent and office with the Kentucky Secretary of State in accordance with KRS 14A.4-010;

(h) Provide a listing of all clients PBM provides services to including any non-ERISA self-funded or governmental plans; and

(i) Provide a listing of any delegated or contracted companies that perform part of the PBM services.

(2)

(a) Upon receipt of a complete application as required by subsection (1) of this section, the commissioner shall review the application and:

1.

a. Approve the application; and

b. Issue the applicant the pharmacy benefit manager license;

2. Notify the applicant that additional information is needed in accordance with paragraph (b) of this subsection; or

3. Deny the application in accordance with paragraph (c) of this subsection.

(b)

1. If supplemental or additional information is necessary to complete the application, the applicant shall submit that information within thirty (30) days from the date of the notification from the commissioner.

2. If the missing or necessary information is not received within thirty (30) days from the date of the notification, the commissioner shall deny the application unless good cause is shown. To determine if the applicant has demonstrated good cause, the commissioner shall weigh the justification provided against any other issues, including if the applicant had submitted any prior good cause excuses for the same request. Some examples of good cause include:

a. Personnel-related issues, including the individual responsible for responding was transferred, terminated, or became incapacitated due to illness;

b. A need to obtain information that was not immediately available and had to be requested from other sources;

c. A lack of sufficient resources to respond to large requests; and

d. Information technology, operational, or equipment malfunctions causing unexpected delays.

(c) If the commissioner determines that the applicant does not meet the requirements for licensure, or if the application is denied pursuant to paragraph (b)2. of this subsection, the commissioner shall:

1. Provide written notice to the applicant that the application has been denied; and

2. Advise the applicant that a request for a hearing may be filed in accordance with KRS 304.2-310.

(3)

(a) ~~Except as provided in paragraph (b) of this subsection, a~~ pharmacy benefit manager license shall:

1. Be renewed annually as required by subsection (4) of this section; or

2. Expire on March 31.

(b) An applicant for a pharmacy benefit manager license shall pay a registration fee of \$10,000 and a license application fee of \$1,000 within thirty (30) days of initial licensure and annually thereafter on or before March 31. [If the license was issued on or before January 1, 2017, the license shall expire on March 31, 2018, if not renewed as required by subsection (4) of this section.]

(4)

(a) A renewal application shall include the items required by subsection (1) of this section.

(b) If the renewal application is submitted after the renewal date of March 31 but between April 1 and May 31, the application required by subsection (1) of this section shall be accompanied by a penalty

fee of \$500 in accordance with KRS 304.9-053(4[5]). A license approved by May 31 shall be considered continuously active.

Section 3. Notice of Changes. Within thirty (30) days of any change, a licensee shall notify the commissioner of all changes among its members, directors, officers, and other individuals designated or registered to the license, any changes to the listing of clients and delegated contractors provided in the most recent application filed by the licensee, and any changes to its written policies and procedures submitted pursuant to Section 2(1)(f) of this administrative regulation.

Section 4. Incorporation by Reference.

(1) "Pharmacy Benefit Manager License Application", Form PBM, 10/2024[2024], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Web site at: <http://insurance.ky.gov/ppc/CHAPTER.aspx>.

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: November 14, 2024

FILED WITH LRC: November 14, 2024 at 2:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on January 23, 2025, at 500 Mero Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. If held, this hearing will be 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 PM on January 31, 2025. 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: Shaun T. Orme, Executive Advisor, 500 Mero Street, Frankfort, KY 40601, Phone: (502) 782-1698, Fax: (502) 564-1453, Email: shaun.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes an annual registration fee for pharmacy benefit managers, pursuant to 2024 Regular Session Senate Bill 188.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the additional funds to support the new requirements of 2024 Regular Session Senate Bill 188.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.9-054(7) says that we can impose a fee, in addition to license fee, to cover the costs of implementation of KRS 304.9-054. 2024 Regular Session Senate Bill 188 requires the regulation to provide for additional programs and administrative review that will result in increased expense to the Department, which may be offset by the licensees. This amendment provides the amount required by the new registration fee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides the amount required by the new registration fee.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes an annual registration fee.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to offset the expenses

resulting from the implementation of 2024 Regular Session Senate Bill 188.

(c) How the amendment conforms to the content of the authorizing statutes: 2024 Regular Session Senate Bill 188 requires the regulation to provide for additional programs and administrative review that will result in increased expense to the Department, which may be offset by the licensees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides the amount required by the new registration fee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 50 pharmacy benefit management entities will be 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 pharmacy benefit management entities will have to pay the annual registration fee upon issuance of a license and annually thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will cost the pharmacy benefit management entities ten thousand dollars (\$10,000), annually.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacy benefit management entities will be able to pay a uniform fee to share in the cost of the increased burden placed on the industry to protect consumers from unregulated practices.

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

(a) Initially: Approximately six hundred sixty thousand dollars (\$660,000).

(b) On a continuing basis: Approximately six hundred sixty thousand dollars (\$660,000).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Insurance's operational budget and the new annual registration fee.

(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 purpose of this amendment is to increase fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, this regulation establishes a ten thousand dollar (\$10,000) annual fee.

(9) TIERING: Is tiering applied? Tiering is not applied as the provisions of this administrative regulation apply to all 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 304.2-110(1), 304.9-053(2), 304.9-054(6), and KRS 304.9-055.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Department of Insurance as the implementer.

(a) Estimate the following for the first year:

Expenditures: \$660,000

Revenues: \$570,000

Cost Savings: None

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

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): No local entities affected.

(a) Estimate the following for the first year:

Expenditures:

Revenues:

Cost Savings:

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

(4) Identify additional regulated entities not listed in questions (2) or (3): Pharmacy Benefit Managers (PBMs) that apply for a PBM license or renew a PBM license.

(a) Estimate the following for the first year:

Expenditures: \$10,000 per PBM

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No difference. Expenditures will be \$10,000 per year.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation will increase fees paid by PBMs to obtain and renew a PBM license. An additional \$10,000 registration fee is required of PBMs, in addition to the current license fee of \$1,000. There are currently 57 licensed PBMs in Kentucky. This will result in an overall revenue increase for the Department of \$570,000.

(b) Methodology and resources used to determine the fiscal impact:

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) Yes, this administrative regulation will have a major economic impact.

(b) The methodology and resources used to reach this conclusion: Yes, this administrative regulation will have major impact in the aggregate for both the Department and PBMs. SB 188 was enacted during the 2024 legislative session. SB 188 significantly increased the Department's regulatory oversight of PBMs, including requiring the Department to conduct a study, at least every two years, to determine the average dispensing fee for pharmacies in Kentucky. To properly conduct the study, the Department will need to contract with a firm that has experience conducting similar studies. The estimated cost for performing this work, along with hiring additional staff, is \$660,000. This estimate is based on similar contract work performed for the Department by contract actuaries and the cost of adding the necessary additional staff. PBMs currently pay a \$1,000 application fee to obtain or renew a PBM license. The regulation proposes to impose an additional \$10,000 registration fee for each PBM that requests a PBM license or renews a PBM license. There are currently 57 licensed PBMs in Kentucky. Therefore, the overall cost imposed on the PBMs will be \$570,000.

HORSE RACING AND GAMING CORPORATION (Amendment)

810 KAR 2:070. Thoroughbred and other flat racing associations.

RELATES TO: KRS 230.215(2), 230.260(8)

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the corporation to promulgate administrative regulations establishing conditions governing horse racing. This administrative regulation establishes requirements for thoroughbred and other flat racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track.

(1) The grounds and facilities of an association shall be maintained in a manner that provides for the:

(a) Comfort and safety of patrons, employees, and other persons whose business requires their attendance; and

(b) Health and safety of horses that are stabled, exercised, or entered to race at the association.

(2) The grounds and facilities of an association shall be:

(a) Neat and clean;

(b) Painted; and

(c) In good repair.

(3) An association shall have implements adequate to maintain a uniform track, weather conditions permitting.

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Section 2. Results Boards, Totalizators Required. An association shall provide and maintain mechanically operated totalizators and electronic boards that show odds, results, and other race information in plain view of patrons.

Section 3. Starting Gate.

(1) An association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip.

(2) An association shall have in attendance one (1) or more persons qualified to keep the starting gates in good working order whenever the gates are in use.

(3) An association shall provide for periodic inspections of the starting gates.

Section 4. Stabling.

(1) An association barn and stall shall be:

(a) ~~Constructed of fire-resistant material;~~

~~[(b)]~~ Clean, sanitary, and equipped for adequate drainage; and

~~[(c)]~~ Maintained in good repair.

(2)

(a) Prior to the opening of a race meeting, the corporation shall submit to the racing secretary a list of locations of approved off-track stabling facilities from which horses shall be permitted to race.

(b) The locations shall be considered association grounds.

Section 5. Stands for Officials.

(1) An association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials.

(2) The stands and their locations shall be approved by the corporation.

(3) The floor of patrol judge stands shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings.

(1) A thoroughbred or other flat racing association shall have:

(a) Red and white quarter poles;

(b) Green and white eighth poles; and

(c) Black and white 16th poles.

(2) Permanent markers shall be located at each standard Arabian, quarter horse, paint horse, and appaloosa distance as applicable. Distance pole markers and permanent markers shall be located where they can be seen clearly from the stewards' stand. Each post shall be identified by color as follows: 110 yds., black and white stripes; 220 yds., white; 250 yds., blue; 300 yds., yellow; 330 yds., green; 350 yds., red; 400 yds., black; 440 yds., orange; 550 yds., blue and white stripe; 660 yds., yellow and white stripes; 770 yds., green and white stripes; 870 yds., red and white stripes; and 1,000 yds., red and blue stripes. In addition, for appaloosa races, markers shall be located at six (6) and six and one-half (6 1/2) furlongs to be painted yellow and white and orange and white, respectively.

Section 7. Lighting.

(1) An association shall provide and maintain flood lights that provide adequate illumination in the stable area and parking area.

(2) If an association conducts night racing, it shall provide adequate track lighting.

Section 8. Facilities for Stable Employees.

(1) An association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities that shall include showers, toilets, and wash basins for stable employees.

(2) Personnel shall not be permitted to sleep in a stall or barn loft.

Section 9. Facilities for Jockeys.

(1) An association shall provide and maintain adequate facilities for jockeys scheduled to ride each day.

(2) The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins,

mirrors, arrangements for safekeeping of apparel and personal effects, and snack bar.

Section 10. Facilities for Corporation.

(1) An association shall provide adequate office space for the corporation on its grounds.

(2) To assist in the conduct of official business, an association shall provide the following to the corporation:

(a) A season box, marked "Kentucky Horse Racing and Gaming Corporation[]", of six (6) to eight (8) seats; and

(b) A number of parking places sufficient for the corporation and corporation staff.

(3) An association shall honor for access to preferred parking facilities and other areas on its grounds a corporation or Association of Racing Commissioners International ring, lapel button, or automobile emblem.

Section 11. Sanitary Facilities for Patrons. An association shall, on every racing day, provide sanitary toilets and wash rooms, and free drinking water adequate for the number of patrons and persons having business at the association that comply with applicable statutes, administrative regulations, codes, or ordinances.

Section 12. Manure Removal.

(1) An association shall provide and maintain manure pits of the size and construction adequate to handle refuse from stalls.

(2) The contents of the manure pits shall be removed from the stable area as promptly as is possible.

Section 13. Photo Finish Cameras.

(1) An association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races. For Quarter Horse races, the photo finish cameras shall be equipped with mirror image to photograph the finish of each race and shall record the running time for each horse to the nearest 1/1000th second.

(2) One (1) of the photo finish cameras shall be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges the number of prints of finishes requested.

(3) An association shall maintain a one (1) year file of all photo finishes.

Section 14. Race Replays.

(1) During a race meeting, an association shall provide and maintain personnel and equipment necessary to record and produce race replays that clearly record each race from start to finish.

(2) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(3)

(a) A race replay shall be:

1. Retained and secured by an association for at least one (1) year; and

2. Made available to the corporation and stewards upon demand.

(b) Upon order of the stewards, a visual record of a race that has raised a question, dispute, or controversy shall be filed with the corporation.

(4) Race replays shall be made available:

(a) For viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed; and

(b) To members of the press.

Section 15. Ambulances.

(1) An association shall provide and maintain at least one (1) human ambulance and one (1) horse-ambulance whenever horses are permitted to exercise or race.

(2) An ambulance shall be:

(a) Equipped;

(b) Manned;

(c) Ready for immediate duty; and

(d) Located at an entrance to the racing strip.

Section 16.

(1) Except as provided by subsection (2) of this section, an association shall equip and maintain a first aid facility that is:

- (a) Equipped with at least two (2) beds; and
- (b) Attended by a licensed physician and registered nurse or a board-certified athletic trainer during race hours.

(2) An association shall not be required to maintain a first aid facility, if the association has an ambulance on standby on its premises during racing hours which:

- (a) Can transport or make arrangements to transport an injured individual to a fully-equipped hospital emergency room in five (5) minutes or less; and
 - (b) Is manned by a certified paramedic and certified emergency medical technician.
- (3) A paramedic provided pursuant to subsection (2) of this section shall be equipped with:
- (a) Heart monitor and defibrillator;
 - (b) Cellular phone; and
 - (c) Airways intubation equipment.

Section 17. Track Kitchen. An association shall provide a track kitchen within the stable area, maintained in a clean and sanitary manner that complies with applicable statutes, administrative regulations, codes, or ordinances, at all times horses are stabled on association grounds.

Section 18. Communication System. An association shall install and maintain in good working service a communication system between the stewards' stand and:

- (1) Outriders;
- (2) Pari-mutuel department;
- (3) Starting gate;
- (4) Public address announcer; and
- (5) Clerk of the scales.

Section 19. Fire Prevention.

(1) An association shall have a fire prevention and suppression program.

(2) The corporation shall not approve the commencement of a race meeting unless, within fifteen (15) days before commencement of the race meeting, the state or local fire marshal:

- (a) Has inspected the association; and
- (b) Certified that the association plant and stable area meets fire safety requirements.

(3) An association shall maintain a firefighting unit of trained personnel that has high-expansion foam fire extinguishers and other equipment required by the local fire inspection authority.

- (4) An association shall prohibit:
 - (a) Smoking in stalls, under shed rows, and in feed rooms;
 - (b) Open fires and oil or gas lamps in the stable area; and
 - (c) Locking of stalls occupied by horses.

Section 20. Association Security.

(1) An association shall provide and maintain security services, night and day, on and about association grounds.

(2) An association shall furnish to the stewards a report on any disturbances or disorderly conduct committed by a person on association grounds.

(3) An association shall exclude from association grounds a person designated to be denied access by order of the corporation or stewards.

(4) An association shall implement security measures to protect a horse on association grounds from being injured by being frightened or tampered with.

(5) An association shall exclude from the paddock area, race strip, and winner's entrance a person who:

- (a) Does not have an immediate connection with the horses entered; and
- (b) Is not a corporation member, racing official, or accredited member of the news media.

Section 21. Vendors and Suppliers.

(1) A vendor shall comply with procedures and requirements established by an association.

(2) An association shall not attempt to control or monopolize sales to owners, trainers, or stable employees.

(3) An association shall not grant an exclusive concession to a vendor of feed, racing supplies, or racing services.

(4) A vendor of horse feeds or medications shall file with the corporation veterinarian a list of products that he or she proposes to sell, including a new preparation or medication.

(5) An association shall not permit the sale of an alcoholic beverage except beer within the stable area.

Section 22. Ejection or Exclusion from Association Grounds.

(1) An association shall for probable cause eject or exclude from association grounds a person:

(a) Believed to be engaged in:

- 1. A bookmaking activity;
- 2. Solicitation of bets; or
- 3. Touting;

(b) Who as a business or for compensation, either directly or indirectly:

- 1. Accepted anything of value to be wagered, transmitted, or delivered for wager to a pari-mutuel wagering enterprise; or
- 2. Participated in the transaction; or
- (c) Who attempted to use tax exempt admissions credentials not issued to him by the association.

(2) An association shall eject or exclude from its stable area a person who is not:

- (a) Licensed to conduct an activity that requires his presence in the stable area;
- (b) An accredited member of the news media;
- (c) A guest of a licensed owner or trainer accompanied by the owner or trainer; or
- (d) Accompanied by, and under the control and supervision of a:

- 1. Racing official;
 - 2. Association security guard; or
 - 3. Association public relations department representative.
- (3)

(a) A report of an ejection or exclusion from association grounds shall be made immediately to the stewards, judges, and corporation director of security.

(b) A report shall state the:

- 1. Name of person ejected or excluded;
- 2. Reasons for the ejection or exclusion; and
- 3. Facts relating to the ejection or exclusion.

Section 23. Ownership of Associations. An association shall file with the corporation a revised list of persons whose identity is required by 810 KAR 3:010 immediately upon transfer of a beneficial interest or control in the association.

Section 24. Plan of Association Grounds.

(1) An association shall file with the corporation maps and plans of association grounds, showing:

- (a) Structures;
- (b) Piping;
- (c) Fire hydrants;
- (d) Fixed equipment;
- (e) Racing strip, noting elevation as filled, drained, and gapped;

and

(f) Composition of track base and cushion.

(2) An association shall file revised maps or plans of association grounds upon any material change.

Section 25. Attendance and Badge List Reports; Tax Exempt Credentials.

(1) An association shall file with the corporation a copy of the form required by KRS 137.180 and 138.480, "Race Track Pari-mutuel and Admissions Report," Revenue Form 73A100.

(2) A tax exempt admission credential shall not be transferable.

Section 26. Financial Report. Within sixty (60) days after the close of its fiscal year, an association shall file:

- (1) Three (3) copies of its balance sheet; and
- (2) A comparison to the prior year.

Section 27. Horseman's Account and Horseman's Bookkeeper.

(1) An association shall maintain a bank account that shall:

- (a) Be separate from its other accounts;
- (b) Be titled "horsemen's account"; and
- (c) Contain sufficient funds to pay money owing to horsemen for:
 - 1. Purses;
 - 2. Stakes;
 - 3. Rewards;
 - 4. Claims; and
 - 5. Deposits.

(2) Withdrawals from the horsemen's account shall be subject to audit by the corporation at any time.

(3)

(a) For all races, purse money shall be available to earners after the result of the race in which the money was earned has been declared official and:

1. For race dates where all samples are reported by the corporation laboratory as passed at the screening level, within twenty-four (24) hours after receipt of the report by the corporation; or

2. For race dates where one (1) or more sample is reported by the corporation laboratory as suspicious at the screening level, within twenty-four (24) hours after receipt of the final report by the corporation.

(b) If a horse is disqualified and an appeal has been filed, purse money shall be available to other participants entitled to purse money in the amount they would have earned had a horse not been disqualified. The purse money to which the disqualified participant would be entitled shall be held in escrow by the association until final adjudication of a dispute over which persons are entitled to money.

(4)

(a) Except for jockey fees, a deduction from purse money shall not be made, unless the deduction has been requested in writing by the:

- 1. Person to whom purse money is payable; or
- 2. Authorized representative of the person to whom purse money is payable.

(b) Whether or not a deduction request is made, at the close of a race meeting, the horsemen's bookkeeper in charge of the horsemen's account shall mail to an owner a duplicate of each record of a deposit, withdrawal, or transfer of funds that affects his racing account.

(5) The horsemen's bookkeeper in charge of the horsemen's account shall be bonded.

Section 28. Outriders.

(1) An association shall employ at least two (2) outriders.

(2) An outrider shall:

- (a) Escort starters to the post;
- (b) Assist in the returning of horses to the unsaddling area;
- (c) Only lead a horse that has demonstrated unruliness; and
- (d) Assist in the control of a horse that might cause injury to a jockey or others.

(3) Whenever horses are permitted on the racing strip for exercising or racing, an outrider shall be:

- (a) Present on the racing strip;
- (b) Mounted; and
- (c) Ready to assist in the:
 - 1. Control of an unruly horse; or
 - 2. Recapture of a loose horse.

Section 29. Safety Equipment.

(1) A person mounted on a horse or stable pony at a location under the jurisdiction of the corporation shall wear a properly secured safety helmet at all times. If requested by a corporation official, the person shall provide sufficient evidence that his helmet has a tag, stamp, or similar identifying marker indicating that it meets one of the following safety standards:

- (a) ASTM International Standard, ASTM F1163-04a;
- (b) British Standards, BS EN 1384:1997 or PAS 015:1999; or
- (c) Australian/New Zealand Standard, AS/NZS 3838:2006.

(2) A person mounted on a horse or stable pony on a location under the jurisdiction of the corporation, assistant starters, and a

person handling a horse in a starting gate shall wear a safety vest at all times. If requested by a corporation official, the person shall provide sufficient evidence that his safety vest has a tag, stamp, or similar identifying marker indicating that it meets or exceeds one (1) of the following safety standards:

- (a) British Equestrian Trade Association (BETA):2000 Level 1;
- (b) Euro Norm (EN) 13158:2000 Level 1;
- (c) ASTM International Standard, ASTM F2681-08;
- (d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or
- (e) Australian Racing Board (ARB) Standard 1.1998.

Section 30. Valets.

(1) An association shall employ a number of licensed valets sufficient to attend each rider on a day's racing program.

(2) A valet shall be under the immediate supervision and control of the clerk of scales.

(3) A rider shall not employ a valet or be attended by a person other than the valet assigned to him by the clerk of scales.

(4) A valet shall:

- (a) Be responsible for the care and cleaning up of the apparel and equipment of his assigned rider;
- (b) Ensure his rider has the proper equipment and colors for a race;
- (c) Present the proper equipment and attend the saddling of his rider's mount; and
- (d) Attend the weighing out of his rider.

(5) A valet or other jockey room attendant shall not place a wager, directly or indirectly, on races run while he serves as a valet for himself or another.

(6) An association shall provide uniform attire for all valets that shall be worn whenever they perform their duties within public view.

Section 31. Minimum Purse and Stakes Values.

(1) An association shall not program or run any race for which the purse is less than \$2,000 in cash, without special permission of the corporation.

(2) An association shall not program or run a stakes race for which the added value is less than \$10,000 in cash added by the association to stakes fees paid by owners.

(3) The minimum cash amounts paid by the association shall be exclusive of:

- (a) Nomination;
- (b) Eligibility;
- (c) Entrance;
- (d) Starting fees;
- (e) Cash awards;
- (f) Premiums;
- (g) Prizes; or
- (h) Objects of value.

Section 32. Maximum Number of Races. An association shall not program or run more than nine (9) races on a racing day without permission of the corporation.

Section 33. Two (2) Year Old Races.

~~[(1)] [Beginning on March 1 of each year, an association shall program in the conditions book at least four (4) two (2) year old races each week.]~~

~~[(2)] Quarter horse race conditions for two (2) [-]year-olds shall not be offered in the condition book prior to March 1 of that corresponding year.~~

Section 34.

(1)

(a) Exculpatory clauses. Stall applications, entry forms, condition books, and other agreements between persons or entities licensed by the Kentucky Horse Racing and Gaming Corporation regarding the stabling of horses, the racing of horses, the training of horses, or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licensed associations, shall not contain provisions that absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury, or damage caused or contributed to by

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the acts or omissions of any licensee, its agents, or employees, except for:

1. Ordinary negligence that causes or contributes to loss, injury, or damage to horses while on the premises of a licensed association; and

2. Ordinary negligence that causes or contributes to personal injury or property damage, including loss, loss of use, injury, or damage to horses arising from the use of grass fields or gallops owned or controlled by the licensed association.

(b) Subject to the exception in paragraph (a) of this subsection, licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. A licensee shall not attempt to limit liability of a person or entity for gross negligence or intentional wrongdoing.

(2) Constructive notice to and consent of licensees. Persons licensed by the Kentucky Horse Racing and Gaming Corporation shall be deemed, as a condition of licensure, to have notice of and to have consented to exculpatory provisions, which comply with the limitations set forth in this administrative regulation, included in agreements between licensees and in conditions of racing established by a licensed association. Exculpatory provisions that exceed the limitations set forth in this administrative regulation shall be void and unenforceable in their entirety.

(3) Model provision. The following provision shall be deemed to comply with the limitations set forth in this administrative regulation: All Kentucky Horse Racing and Gaming Corporation licensees, including but not limited to the host association, owners, trainers, jockeys, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in these activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training, and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless, and covenant not to sue other participating licensees for:

(a) Ordinary negligence that causes or contributes to loss, loss of use, injury, or damage to horses while on the premises of (name of licensed association); and

(b) Ordinary negligence that causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury, or damage to horses arising from the use of grass fields or gallops owned or controlled by (name of licensed association), whether arising from alleged acts or omissions of a licensee, its agents, or employees, the condition of the premises of (name of licensed association), or any other cause. Except as provided above, all licensees participating in racing, training, and related activities at (name of licensed association) shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law.

JONATHAN RABINOWITZ, Chair

APPROVED BY AGENCY: November 8, 2024

FILED WITH LRC: November 12, 2024 at 11:14 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2025, at 9:00 a.m. ET at the offices of the Kentucky Horse Racing and Gaming Corporation, 4047 Iron Works Parkway, Lexington, Kentucky 40511. 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 January 31, 2025. 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: Travers Manley, Interim General Counsel, Kentucky Horse Racing Commission, 4047 Iron Works Parkway,

Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email travers.manley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Travers Manley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for thoroughbred and other flat racing associations. This includes requirements, such as, maintenance of the facilities, video and communication systems, horsemen's accounts, and purse minimums.

(b) The necessity of this administrative regulation: This regulation is necessary to provide minimum requirements for thoroughbred and flat racing associations in Kentucky and promotes the welfare, safety, and integrity of horse racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Kentucky Horse Racing and Gaming Corporation is vested with forceful control of horse racing in the Commonwealth. KRS 230.215(2)(a). The KHRGC is vested with jurisdiction and supervision over all live horse racing and pari-mutuel wagering in the state and over all associations and persons on association grounds. KRS 230.260(1). The KHRGC shall have full authority to prescribe necessary and reasonable administrative regulations under which horse racing at a horse race meeting shall be conducted in Kentucky. KRS 230.260(8). This regulation provides necessary requirements for associations conducting thoroughbred and other flat racing in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by providing important requirements for associations in Kentucky conducting thoroughbred and other flat racing.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the requirement that barns and stalls must be constructed with fire-resistant material, allows associations to staff first aid facilities with a registered nurse or a board-certified athletic trainer, permits ambulances on the grounds to arrange for transportation of an injured individual to a hospital emergency room rather than transport the individual, and removes language requiring associations to program at least four, two-year-old races in the condition book each week beginning March 1.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove ambiguous language about material used to construct barns and stalls, remove an unnecessary and obsolete requirement to program a certain number of two-year-old races beginning March 1, gives flexibility to associations on the staffing of their first aid facilities, and allows ambulances at the association's facility to remain on the grounds and arrange for transportation of an injured individual as opposed to transporting the individual personally.

(c) How the amendment conforms to the content of the authorizing statutes: The Kentucky Horse Racing and Gaming Corporation is vested with forceful control of horse racing in the Commonwealth. KRS 230.215(2)(a). The KHRGC is vested with jurisdiction and supervision over all live horse racing and pari-mutuel wagering in the state and over all associations and persons on association grounds. KRS 230.260(1). The KHRGC shall have full authority to prescribe necessary and reasonable administrative regulations under which horse racing at a horse race meeting shall be conducted in Kentucky. KRS 230.260(8). These amendments provide necessary changes to the regulations setting requirements for thoroughbred and other flat racing associations in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by making necessary changes to the regulation setting requirements for associations conducting thoroughbred and other flat racing in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation most directly

impacts the six licensed associations conducting thoroughbred and other flat racing in Kentucky. The regulation also impacts horsemen, first responders, and healthcare professionals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to the administrative regulation does not add any requirements or restrictions to entities identified in (3), but rather it removes certain requirements and grants flexibility.

(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 is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Associations will have more flexibility in staffing first aid facilities and programming races and will have ambiguous language regarding the constructing of barns and stalls removed, which adds clarity to the regulation.

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

(a) Initially: There is no anticipated additional cost to implement the amendments to this administrative regulation.

(b) On a continuing basis: There is no anticipated continuing cost to administer the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding needed to implement and enforce the amendments to 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 necessary to implement the amendments to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities and individuals in the same manner.

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 statutory authority for this administrative regulation is KRS 230.215(2)(a), KRS 230.260(1), and KRS 230.260(8).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Horse Racing and Gaming Corporation.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are anticipated.

Revenues: No additional revenue is anticipated.

Cost Savings: No cost savings are anticipated.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No changes are anticipated in subsequent years.

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

(4) Identify additional regulated entities not listed in questions (2) or (3): Regulated entities impacted by this regulation include the six licensed associations conducting thoroughbred and other flat racing in Kentucky.

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: Regulated entities may experience cost savings based on the removal of ambiguous language related to the construction of barns and stalls. An estimate cannot be provided.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Regulated entities may experience cost savings based on the removal of ambiguous language related to the construction of barns and stalls. An estimate cannot be provided.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is little to no fiscal impact as a result of the amendments to this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: The amendments remove requirements and give associations more flexibility. The only amendment that could result in any fiscal impact is the amendment to remove ambiguous language regarding the construction of barns and stalls and that could possibly decrease construction and/or repair expenses for an association.

(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) These amendments are not expected to have a major economic impact.

(b) The methodology and resources used to reach this conclusion: The only amendment that could result in any fiscal impact is the amendment to remove ambiguous language regarding the construction of barns and stalls and that could possibly decrease construction and/or repair expenses for an association.

HORSE RACING AND GAMING CORPORATION (Amendment)

810 KAR 4:030. Entries, subscriptions, and declarations.

RELATES TO: KRS 230.215, 230.240, 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2)(a), (c), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2)(a) and (c) authorize the Kentucky Horse Racing and Gaming Corporation to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260(8) authorizes the corporation to regulate conditions under which horse racing shall be conducted in Kentucky. This administrative regulation establishes requirements for entry, subscription, and declaration of horses in order to race.

Section 1. Definition. "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, entered in the race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries.

(1) An entry, subscription, declaration, or scratch shall be filed with the racing secretary and shall not be effective until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of an entry, subscription, declaration, or scratch for a period of at least one (1) year.

(2) An entry shall be made by the owner, the trainer, or an authorized agent of the owner or trainer. An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary pursuant to subsection (3) of this section.

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered as reflected by its registration certificate, racing permit, or virtual certificate.

(a) A horse shall not race unless registered pursuant to 810 KAR 8:010 or otherwise correctly identified to the satisfaction of the stewards.

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person required to certify the identity of the horse. A person shall be subject to appropriate disciplinary action under 810 KAR 8:030 for incorrect identification.

(5) The entry shall indicate usage of furosemide pursuant to 810 KAR 8:010.

(6) An entry shall not be altered after the closing of entries, except to correct an error with permission of the stewards.

(7)

(a) A horse shall not be entered in two (2) races to be run on the same day, unless:

1. Both races are graded-stakes races;

2. The horse will not be in the body of both races; and

3. The horse is not entered in either race to the exclusion of any horse.

(b) Regardless of Section 15(1)(a), a horse entered in two races to be run on the same day must scratch from at least one of the races at the earliest posted scratch time applicable to either race.

(8)

(a) A horse that has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards. If a horse has performed the requisite workout, but the workout does not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workout failed to be published through no fault of the trainer.

(b) A horse that has not started in the past ninety (90) days shall not be permitted to start unless it has at least two (2) published workouts during the past ninety (90) day period, one of which occurs within twenty (20) days of entry at a distance satisfactory to the stewards. If a horse has performed the requisite workouts, but the workouts do not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workout failed to be published through no fault of the trainer.

(c) A horse that has not started in the past 180 days shall not be permitted to start unless it has at least three (3) published workouts during the past 180-day period, one (1) of which occurs within twenty (20) days of entry, at a distance satisfactory to the stewards. If a horse has performed the requisite workouts, but the workouts do not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workouts failed to be published through no fault of the trainer.

(d) A horse starting for the first time shall not be permitted to start unless it has three (3) workouts, one (1) of which is from the starting gate, one (1) of which is within twenty (20) days of entry, and at least one (1) of which is published.

(e) A workout not appearing in the official program shall be publicly displayed on television monitors, the tote board, and, if available, the bulletin boards where photo finishes are shown at the time when mutuel windows are opened and shall be displayed until the conclusion of the race in which the horse is entered.

(f) A horse that has never started shall not be entered until the trainer has produced a document or card issued by the starter indicating that the horse has been adequately trained to race from the starting gate.

(g) Quarter horses that have never raced around a turn shall have completed at least one (1) workout at 660 yards or farther within thirty (30) days prior to entry.

(h) Quarter horses that have previously started in a race around a turn, but have not started in such a race within sixty (60) days, shall complete at least one (1) workout at 660 yards or farther within thirty (30) days prior to entry.

(9) If the published conditions of the race permit, an association may accept in a turf race an entry designated "main track only." Preference shall apply to all horses drawn into a race, except that horses entered as "main track only" shall be listed as also-eligible and be considered only if the race is taken off the turf.

(10) A horse shall only be permitted to enter if at the time of entry, the owner, trainer, or an authorized agent of the owner or

trainer submits a complete medical record for the horse for the fourteen (14) day period prior to the entry date.

(11) As a condition of entry, quarter horses shall either submit negative hair samples with a test date within thirty (30) days of the race or have a hair sample pulled by a corporation veterinarian prior to the race and sent to a testing laboratory. If a hair sample taken by a corporation veterinarian returns a positive finding, the horse shall be disqualified and the owner and trainer may incur penalties established in 810 KAR 8:030. In addition, all quarter horses shall submit to out-of-competition testing as established by 810 KAR 8:040.

Section 4. Limitation as to Spouses.

(1) An entry in a race shall not be accepted for a horse owned wholly or in part or trained by a person whose spouse is under license suspension, revocation, or is otherwise ineligible to be licensed, at the time of the entry except as established in subsection (2) of this section.

(2) If the license of a jockey has been suspended for a routine riding offense, depending on the severity of the offense, the stewards may waive the application of this section as to the licensed spouse of the suspended jockey.

Section 5. Mutuel Entries.

(1) More than two (2) horses having common ties through ownership or training shall not be entered in a purse race.

(2) Horses entered in the same race and owned wholly or in part by the same owner or spouse, may be joined as a mutuel entry and single betting interest.

(3) More than two (2) horses having common ties through ownership or training shall not be joined as a mutuel entry in a purse race. If making a double entry of horses owned wholly or in part by the same owner or spouse ~~or having common ties through training~~, a preference for one (1) of the horses shall be made.

(4)

~~(a) Two (2) horses having common ties through ownership [or training]~~ shall not start in a purse race to the exclusion of a single entry.

(b) In any race, the racing secretary may uncouple entries having common ties through training or ownership to make two (2) separate betting interests.

Section 6. Subscriptions.

(1) A subscriber to a stakes race may transfer or declare a subscription prior to the closing of entries for the race.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry if the horse is eligible shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of the stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended, revoked, or is otherwise ineligible to be licensed, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 7. Closings.

(1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in an emergency, the racing secretary may extend the closing time, if the approval of a steward has been obtained.

(2) Entries that have closed shall be compiled without delay by the racing secretary and shall be posted along with declarations.

Section 8. Number of Starters in a Race.

(1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the corporation as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses that, in the opinion of the stewards after considering the safety of the horses and riders and the distance from the start to the first turn, may be afforded a fair and equal start.

(2)

(a) A maiden, starter, or claiming race shall be run if:

1. Eight (8) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(b) Except as established in paragraph (c) of this subsection, any other purse race shall be run if:

1. Six (6) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(c) If a purse race under paragraph (b) of this subsection includes two (2) horses having common ties through training or ownership, the race shall be run if eight (8) or more horses are entered.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare the race off. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry.

Section 9. Split or Divided Races.

(1) If a race is cancelled or declared off, the association may split any race programmed for the same day that may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) If a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made and the conditions established in paragraphs (a) through (c) of this subsection.

(a) Horses originally joined as a mutual entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates the coupling of horses is not to be uncoupled if the race is split.

(b) Division of entries in any split stakes race may be made according to age, sex, or both.

(c) Entries for any split race not divided by any method provided for in this administrative regulation shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

Section 10. Post Positions.

(1) Post positions for all races shall be determined by lot, except as established in Section 11(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing.

(2) The racing secretary shall assign program numbers for each starter to conform with the post position drawn, except if a race includes two (2) or more horses joined as a single betting interest.

Section 11. Also-Eligible List.

(1) If the number of entries for a race exceeds the number of horses permitted to start, as established by Section 8 of this administrative regulation, the names of no more than eight (8) horses entered, but not drawn[.] into the race as starters, shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn by lot, unless otherwise stipulated in the conditions of the race.

(3)

(a) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall not forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) A horse on the also-eligible list for a race on the present day that has been drawn into the body of a race on a future race day, shall not be permitted to run in the race on the present day for which it had been listed as also-eligible. This shall not include stakes, handicaps, races at subsequent meets, or races in other jurisdictions.

(5) A horse on the also-eligible list shall be assigned a post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

(6) If there is a scratch in a straightaway quarter horse race that has an also eligible list, the also eligible horse shall take the post position of the scratched horse. If there is a scratch in a quarter horse race around a turn, the also eligible horse shall take the outside post position in the order drawn from the also eligible list.

Section 12. Preferred List.

(1) The racing secretary shall maintain a list of horses that were entered, but denied an opportunity to race because they were eliminated from a race included in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the corporation at least thirty (30) days prior to the opening date of a race meeting, a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it is also entered for a race on a future race day. This shall not include stakes and handicaps.

Section 13. Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 14. Declarations.

(1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

Section 15. Scratches.

(1) Scratches shall be irrevocable and shall be permitted under the conditions established in this section.

(a) Except as established in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time until four (4) hours prior to post time for the race by obtaining approval from the stewards. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of the scratch to be made.

(b) If a list of also-eligible horses has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Scratch time may be extended by the stewards at their discretion if warranted. Thereafter, a horse shall not be scratched unless:

1. A valid physical reason exists; or
2. The scratch is related to adverse track conditions or change of racing surface.

(c) A horse shall not be scratched from a purse race unless:

1. The approval of the stewards has been obtained; and
2. Intention to scratch has been filed in writing with the racing secretary or the secretary's assistant at or before scratch time.

(2) A scratch of one (1) horse coupled in a mutuel entry in a purse race shall be made at or before scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In a purse race, a horse that is physically disabled or sick shall be permitted to be scratched first. If horses representing more than eight (8) betting interests remain in after horses with physical excuses have been scratched, an owner or trainer may scratch horses without physical excuses at scratch time, down to a minimum of eight (8) betting interests. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) A horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall be placed on the corporation's veterinarian list for six (6) calendar days beginning the day after the horse was scratched or excused.

(5) Each association shall keep records and statistics documenting the effect upon field sizes of the six (6) day veterinarian list requirement in subsection (4) of this section. Records and statistics kept pursuant to this section shall be retained by the licensed racing association for at least one (1) year.

Section 16. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form or similar publication as the corporation considers appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign country, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

Section 17. Entry Examination by Attending Veterinarian.

(1) ~~A~~[Subject to the exception in subsection (4) of this section, a] horse shall only start~~[be entered]~~ if:

(a) The horse has been examined by an attending veterinarian licensed by the veterinary regulatory body in the jurisdiction where the examination occurs within~~[no more than]~~ three (3) days after the close of entries and no later than two (2) days before the race; ~~and~~[prior to entry];

(b) The attending veterinarian certifies and electronically submits a report to the Equine Medical Director or its designee~~[in writing]~~ that the horse is in serviceable, sound racing condition~~;~~ and

~~[(c)] [The written certification is provided to the Equine Medical Director or designee no later than the time of entry.]~~

(2) The examination required by subsection (1)(a) of this section shall include, at a minimum, examination of the legs and observation of the horse at rest and while jogging.~~[watching the horse jog in hand.]~~

(3) If the attending veterinarian who examines the horse prescribes a diagnostic test as part of the evaluation of the horse's soundness, the results of the test shall be provided to the corporation's veterinarian no later than one (1) day before the horse is set to start.

~~[(4)] [If a racing secretary contacts a trainer to fill a race, the trainer may enter a horse prior to obtaining the examination and written certification required in this section, if the certification required in this section is provided to the Equine Medical Director or designee on the day that the horse is entered.]~~

JONATHAN RABINOWITZ, Chair

APPROVED BY AGENCY: November 8, 2024

FILED WITH LRC: November 12, 2024 at 11:14 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2025, at 9:00 a.m. ET at the offices of the Kentucky Horse Racing and Gaming Corporation, 4047 Iron Works Parkway, Lexington, Kentucky 40511. 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 January 31, 2025. 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: Travers Manley, Interim General Counsel, Kentucky Horse Racing Commission, 4047 Iron Works Parkway, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email travers.manley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Travers Manley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and procedures related to flat and steeplechase racing entries, subscriptions, and declarations of horses in order to race.

(b) The necessity of this administrative regulation: This regulation is necessary to provide requirements and procedures related to flat and steeplechase racing entries, subscriptions, and declarations of horses in order to race and promotes the integrity of horse racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Kentucky Horse Racing and Gaming Corporation is vested with forceful control of horse racing in the Commonwealth. KRS 230.215(2)(a). The KHRGC is vested with jurisdiction and supervision over all live horse racing and pari-mutuel wagering in the state and over all associations and persons on association grounds. KRS 230.260(1). The KHRGC shall have full authority to prescribe necessary and reasonable administrative regulations under which horse racing at a horse race meeting shall be conducted in Kentucky. KRS 230.260(8). This regulation provides necessary requirements for flat and steeplechase racing in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by providing important requirements for flat and steeplechase racing in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes four sections in 4:030. The change to Section 3 adds circumstances under which a horse may be entered to run in two (2) races on the same day. The changes to Section 5 prevent more than two horses having common ties through ownership to be entered in a purse race and allows for up to two horses having common ties through training to start in a purse race to the exclusion of a single entry. The changes to Section 11 correct a comma-placement error and allow horses scratching from the also-eligible list to maintain any preference to which it may have been entitled. The changes to Section 17 amend the timing and procedure for the examination of an entry by the attending veterinarian.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow horses to enter two (2) races to be run on the same day and making it more likely the horse will be able to run in one of the races; prevents more than two horses having common ties through ownership to be entered in a purse race and gives trainers the ability to enter up to two horses in a purse race to the exclusion of a single entry and without having to prefer one over the other; corrects a comma-placement error and allows horses scratching from the also-eligible list to maintain their preference; and changes the regulation related to the examination by the attending veterinarian to coincide with the modern practice of taking entries to races earlier and assists with the ability of the KHRGC to provide efficient and effective oversight.

(c) How the amendment conforms to the content of the authorizing statutes: The Kentucky Horse Racing and Gaming Corporation is vested with forceful control of horse racing in the Commonwealth. KRS 230.215(2)(a). The KHRGC is vested with jurisdiction and supervision over all live horse racing and pari-mutuel wagering in the state and over all associations and persons on association grounds. KRS 230.260(1). The KHRGC shall have full authority to prescribe necessary and reasonable administrative regulations under which horse racing at a horse race meeting shall be conducted in Kentucky.

KRS 230.260(8). These amendments provide necessary and practical changes to the regulations related to flat and steeplechase racing entries, subscriptions, and declarations of horses in order to race.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by making necessary and practical changes to the regulation related to flat and steeplechase racing entries, subscriptions, and declarations of horses in order to race in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation most directly impacts the six licensed associations conducting flat racing in Kentucky and the horses and horsemen competing at those race meetings.

(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: Racing offices at the impacted licensed associations will need to be aware of the amendments and potentially make changes to their internal practices and procedures. Horsemen competing at the racetracks will need to do the same to properly enter horses to race in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional, required cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Trainers will have more flexibility in entering horses to race in Kentucky and owners of horses scratching from the also-eligible list will benefit by their horses maintaining their preferences.

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

(a) Initially: There is no anticipated additional cost to implement the amendments to this administrative regulation.

(b) On a continuing basis: There is no anticipated continuing cost to administer the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional funding needed to implement and enforce the amendments to 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 necessary to implement the amendments to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities and individuals in the same manner.

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 statutory authority for this administrative regulation is KRS 230.215(2)(a), KRS 230.260(1), and KRS 230.260(8).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Horse Racing and Gaming Corporation.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are anticipated.

Revenues: No additional revenue is anticipated.

Cost Savings: No cost savings are anticipated.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No changes are anticipated in subsequent years.

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

(4) Identify additional regulated entities not listed in questions (2) or (3): Regulated entities impacted by this regulation include the six licensed associations conducting flat racing in Kentucky and the horsemen competing at those racetracks.

(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 changes are anticipated.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is little to no fiscal impact as a result of the amendments to this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: The amendments related to the requirements and procedures for flat and steeplechase racing entries, subscriptions, and declarations, and may have an impact on procedures and practices, but will not have a monetary 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) These amendments are not expected to have a major economic impact.

(b) The methodology and resources used to reach this conclusion: The amendments may result in changes to procedures and practices, but they will not be difficult to implement and will not have a monetary impact.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Income Support

Division of Child Support

(Amendment)

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

RELATES TO: KRS 205.710-205.802, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.450, 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, 42 U.S.C. 651-669b
STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.795 and 405.520 authorize the secretary of the cabinet to promulgate administrative regulations to operate the Child Support Enforcement Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established.

(1) A child support and medical support obligation shall be established by:

(a) A court of competent jurisdiction; or

(b) An administrative order.

(2) The obligation shall be the amount as established administratively or judicially, as computed by the:

(a) CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation;

(b) CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception; or

(c) Any other child support obligation form incorporated by reference in an administrative regulation promulgated by the agency.

(3) The amount determined shall be the amount to be collected. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statutes and legal process in establishing the amount of a child support and medical support obligation, including KRS 403.211, 403.212, 403.2122[403.2124], 405.430, and 454.220.

(5) In addition to the deductions established in KRS 403.212(3), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as established in KRS 403.212(3)(i)(3), shall be calculated by using:

(a) That parent's portion of the total support obligation as indicated on the worksheet, if:

1. There is a support order; and
2. A copy of the child support obligation worksheet is obtained;

or

(b) 100 percent of the income of the parent with whom the prior born child resides, if:

1. There is no support order;
2. There is a support order, but no support obligation worksheet;

or

3. A worksheet cannot be obtained.

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

- (a) Complete service of process; or
- (b) Document an unsuccessful attempt to serve process.

(7) If service of process has been completed, the cabinet shall, if necessary:

- (a) Establish paternity;
- (b) Establish a child support or medical support obligation; or
- (c) Send a copy of any legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment.

(1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:

- (a) Paternity is not in question;
- (b) There is no existing order of support for the child;
- (c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and

- (d) The noncustodial parent's, or obligor's, address is known.

(2) To gather necessary information for administrative establishment, as appropriate the cabinet shall:

- (a) Send to the custodial parent or nonparent custodian forms:

1. CS-133, Custodial Parent Information Request;
2. CS-132, Child Care Expense Verification; and
3. CS-136, Health Insurance Information Request;

(b) Send to the custodial parent the CS-65, Statement of Income and Resources;

- (c) Send to the noncustodial parent forms:

1. CS-64, Noncustodial Parent Appointment Letter;
2. CS-65, Statement of Income and Resources;
3. CS-132, Child Care Expense Verification; and
4. CS-136, Health Insurance Information Request;

(d) Send a CS-130, Income Information Request, to the employer of the:

1. Custodial parent; or
2. Noncustodial parent, or obligor; and

(e) Issue a CS-84 Administrative Subpoena in accordance with KRS 205.712(2)(k) and (n), if appropriate.

(3) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212 and 403.2122[403.2124] or subsection (4) of this section.

(4) In a default case, the cabinet shall establish the obligation based upon the needs of the child or the previous standard of living

of the child, whichever is greater in accordance with KRS 403.211(5).

(5) After the monthly support obligation is determined, the cabinet shall serve a CS-66, Administrative Order/Notice of Monthly Support Obligation, in accordance with the requirements of KRS 405.440 and 42 U.S.C. 654(12).

(6) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (7) of this section.

(7) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

- (a) Administratively upon notice to the obligor or obligee; or
- (b) Judicially through a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders.

(1) In accordance with KRS 405.430(6), the cabinet may modify the monthly support established. Every thirty-six (36) months the cabinet shall notify each party subject to a child support order of the right to request a review of the order.

(2) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review upon the request of:

- (a) Either parent;
- (b) The state agency with assignment; or
- (c) Another party with standing to request a modification.

(3) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

- (a) Conduct the review;
- (b) Modify the order; or
- (c) Determine that circumstances do not meet criteria for modification.

(4) The cabinet shall provide notification within fourteen (14) calendar days of modification or determination to each parent or custodian, if appropriate, and legal representatives by issuing a CS-79, Notification of Review Determination, in accordance with KRS 205.712(2)(m).

(5) In accordance with subsections (2) and (3) of this section, the cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child as established in KRS 403.211(7)(a) through (d).

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "CS-64, Noncustodial Parent Appointment Letter", 3/10;
- (b) "CS-65, Statement of Income and Resources", 6/2021;
- (c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", 3/10;

(d) "CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation", 10/2024[7/2023];

(e) "CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception", 10/2024[7/2023];

- (f) "CS-79, Notification of Review Determination", 3/10;

- (g) "CS-84, Administrative Subpoena", 8/2024;

- (h) "CS-130, Income Information Request", 7/2022;

- (i) "CS-132, Child Care Expense Verification", 3/10;

- (j) "CS-133, Custodial Parent Information Request", 3/10; and

- (k) "CS-136, Health Insurance Information Request", 12/15.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dis/Pages/cse.aspx>.

LILY PATTESON, Acting Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 31, 2024

FILED WITH LRC: November 7, 2024 at 8:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 27, 2025, 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 January 17, 2025, 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 January 31, 2025. 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, KY 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: s: Joe Barnett and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the establishment, review, and modification of child and medical support orders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for the establishment, review and modification of child and medical support orders in accordance with 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, and 42 U.S.C. 651-669b

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 403.211-403.213 to clarify the criteria to determine child support obligations. This administrative regulation establishes such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with establishing procedures to ensure effective administration and conforming to KRS 403.211 through 403.213.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates statutory citations and material incorporated by reference to conform with HB 244 of the 2024 Regular Session.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update statutory citations and material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the cabinet in establishing, reviewing, and modifying child support and medical support orders. This amendment identifies each party that has a right to request a review or modification of the child or medical support order, conforming to 45 CFR 303.8.

(d) How the amendment will assist in the effective administration of the statutes: The forms being revised have been updated to reflect the changes implemented in HB 244 (2024 Regular Session) to establish procedures and parenting time credit when considering a new or modified child support order.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1. Administrative Office of the Courts – 868 employees, 114 district judges, 98 circuit court judges, 60 family court judges 2. Private attorneys – 18,270 3. Child support enforcement

attorneys and staff – 657 4. Participants in the child support program – 503,000

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Administrative Office of the Courts – must educate the judiciary regarding the revised CS-71, Worksheet for Monthly Child Support Obligation and the CS-71.1, Worksheet for Monthly Child Support Obligation Exception. Private attorneys – will access the updated information to become familiar with the revised forms. Child support enforcement attorneys and staff – will receive guidance from the child support program regarding the revised forms. Participants with new cases, or cases where participants request a review and possible modification, will utilize the revised forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will not increase accrued benefits to regulated entities but provides updated forms for determining an obligation.

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

(a) Initially: There will be no costs associated with implementing the changes on our websites.

(b) On a continuing basis: The administrative regulation will not have additional costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state General Funds and Federal Funds under 42 U.S.C. 601-619, Title IV-D of the Social Security Act.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 651-669b, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, KRS 194A.050(1), 205.710-205.802, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.450, 405.991, 406.021, 406.025, 454.220.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services, Department for Income Support, Child Support Enforcement Program

(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? Expenditures, revenues, and cost savings will not differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local entities will not 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?

(4) Identify additional regulated entities not listed in questions (2) or (3): Administrative Office of the Courts, private attorneys, child support enforcement program attorneys and staff, new and existing child support program participants.

(a) Estimate the following for the first year:

Expenditures: , revenues, and cost savings will not differ in subsequent years.

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: There is no fiscal impact of this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: N/A

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact.

(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. 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32

(2) State compliance standards. KRS 194A.050(1), 205.710-205.802, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.450, 405.991, 406.021, 406.025, 454.220

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with 42 U.S.C. 651-669b

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

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

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](#).

CABINET FOR GENERAL GOVERNMENT
Department of State
Office of Elections
(Repealer)

30 KAR 2:011. Repeal of 30 KAR 2:010.

RELATES TO: KRS 14.025, 118.105

STATUTORY AUTHORITY: KRS 13A.120, 13A.310, 118.105

NECESSITY, FUNCTION, AND CONFORMITY: The administrative regulation repealed herein has been superseded by statute. KRS 13A.310(1) establishes a duty to repeal an ordinary administrative regulation if it is desired that it no longer be effective.

Section 1. 30 KAR 2:010. Certification of vacancy in nominations, is hereby repealed.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: November 13, 2024

FILED WITH LRC: November 14, 2024 at 1:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 28, 2025, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2025. 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: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687, email jscutchfield@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Scutchfield

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals regulations that are redundant to statutory provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 13A.120 and KRS 13A.310.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to existing statutory provisions by recognizing their preemptive effect.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals regulations redundant to existing statutory provisions.

(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.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will not impact any individuals, businesses, organizations, of state and local governments.

(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: N/A.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated there will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is anticipated there will be a small benefit of uniformity and fidelity to the preemptive statutory provisions.

(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: There will be no costs to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing appropriations and fund sources for the Office of the Secretary of State.

(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 administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to similarly situated individuals and 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. This administrative regulation is authorized by KRS 13A.120 and 13A.310.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: the promulgating agency is the Office of the Secretary of State and there are not other affected state units, parts, or divisions.

(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): 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

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- (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: n/a
- (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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of November 13, 2024

Call to Order and Roll Call

The November meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, November 13, 2024, at 1:00 p.m. in Room 149 of the Capitol Annex. Senator Stephen West, Co-Chair, called the meeting to order, and roll call was taken.

Present were:

Members: Senator Stephen West, Co-Chair; Representative Derek Lewis, Co-Chair; Senators Julie Raque Adams, Damon Thayer, and David Yates; and Representatives Randy Bridges, Deanna Frazier Gordon, and Keturah Herron.

LRC Staff: Stacy Auterson, Laura Begin, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

Guests: Christopher Bowlin, Stephen Humphress, Office of Attorney General; Jamie Caldwell, Rosemary Holbrook, Personnel Cabinet; Beau Barnes, Teachers' Retirement System; Chelsey Couch, Ashely Daily, Finance and Administration Cabinet; Eden Davis, Christopher Harlow, Board of Pharmacy; Jeff Allen, Board of Dentistry; Kyle Elliott, Jake Miller, Board of Licensure for Professional Engineers and Land Surveyors; Sara Janes, Marva Johnson, Board of Interpreters for the Deaf and Hard of Hearing; Samuel Thorner, Kentucky Housing Corporation; Eddie Slone, John Wood, Board of Emergency Medical Services; Seth Fawns, Cyndi Heddleston, Parole Board; Jon Johnson, Tony Youssefi, Transportation Cabinet; Todd Allen, Board of Education; Julie Brooks, Andrea Day, Jay Klein, Rachel Ratliff, Jonathan Scott, Dr. Steven Stack, Todd Trapp, Cabinet for Health and Family Services; Linda Bozeman, certified and licensed interpreter; Shannon Stiglitz, senior vice president, Kentucky Retail Federation; and Delphia and John Taylor, 502 Hemp and Kentucky Hemp Association.

Administrative Regulations Review by this Subcommittee:

OFFICE OF ATTORNEY GENERAL: Office of Regulatory Relief

040 KAR 012:010. Regulatory sandbox application process and reporting procedures. Christopher Bowlin, executive director, Office of Administrative Hearings, and Stephen Humphress, executive director, Office of Regulatory Relief, represented the office.

PERSONNEL CABINET: Classified

101 KAR 002:086. Internship interview preference. Jamie Caldwell, commissioner, and Rosemary Holbrook, general counsel, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Teachers' Retirement System: General Rules

102 KAR 001:320. Qualified domestic relations orders. Beau Barnes, deputy executive secretary and general counsel, represented the system.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 through 6, 8, and 10; and incorporated material to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

State Investment Commission

200 KAR 014:011. Qualified investments. Chelsey Couch, executive director, and Ashley Daily, staff attorney, represented the

cabinet.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 6 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

200 KAR 014:081. Repurchase agreement.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

200 KAR 014:091. Guidelines for money market instruments.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of the Secretary: Kentucky Private Activity Bond Allocation Committee

200 KAR 015:010. Formula for allocation of private activity bonds.

In response to questions by Co-Chair West, Ms. Couch stated that this proposed amendment removed specific provisions for the American Recovery and Reinvestment Act in order to leave a broad framework for any future stimulus.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 6, 7, 10, 12, and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:370. Pharmacy services in a long-term care facility (LTCF). Eden Davis, general counsel, and Christopher Harlow, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to exclude from the definition for "long-term care facility", assisted living communities, as defined by KRS 194A.710(2)(a); and (3) to amend Section 2 for consistency with the categories of assisted living community licensure as established in KRS 194A.710(2). Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 002:480. Telework and electronic supervision for remote prescription processing.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Dentistry

201 KAR 008:563. Licensure of dental hygienists. Jeff Allen, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to make a correction that dental hygienist licenses issued by the board expire on December 31 of even-numbered years, as statutorily required; and (2) to amend Sections 1, 5, 8, 11, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Professional Engineers and Land Surveyors

201 KAR 018:010. Classes of applicants. Kyle Elliot, executive director, and Jake Miller, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY 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.

201 KAR 018:030. In training certificates.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 018:115. License reinstatement.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 018:192. Continuing professional development for professional land surveyors.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 5, 8, and 9 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 7 and add a Section 10 to incorporate a form by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 018:196. Continuing professional development for professional engineers.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, 5, and 8 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 7 and add a Section 9 to incorporate a form by reference. Without objection, and with agreement of the agency, the amendments were approved.

Board of Interpreters for the Deaf and Hard of Hearing

201 KAR 039:001. Definitions for 201 KAR Chapter 39. Sara Janes, staff attorney, and Marva Johnson, chair, represented the board. Linda Bozeman, certified and licensed interpreter, appeared in opposition to 201 KAR 39:030.

In response to questions by Representative Frazier Gordon, Ms. Johnson stated that there were 533 fully licensed interpreters, forty-five (45) temporarily licensed interpreters, and a national shortage.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) delete one (1) definition no longer being used; (2) revise six (6) definitions; and (3) comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 039:030. Application; qualifications for full licensure; and certification levels.

In response to questions by Co-Chair West, Ms. Janes stated that this administrative regulation related to licensure of interpreters, and the proposed amendment was intended to clarify credentialing requirements by removing licensure provisions based on the Educational Interpreter Performance Assessment (EIPA) certificate. Ms. Johnson stated that, for full licensure, the board's authorizing statute required certification from a nationally recognized organization. The EIPA was an assessment tool, not a certification, and was no longer nationally recognized because of past confusion

regarding certification versus an assessment certificate. The national Registry for Interpreters for the Deaf, Inc., only recognized EIPA as an assessment certificate, not as a credentialing program, and that recognition was only between 2012 and 2017. Ms. Janes stated that, in the Amended After Comments version of this administrative regulation, the twenty-two (22) interpreters currently licensed based on an EIPA certificate would remain licensed if those licensees maintained compliance with established board requirements.

In response to questions by Co-Chair West, Ms. Bozeman stated that Kentucky was experiencing a shortage of licensed interpreters and the proposed amendments could make it more difficult for out-of-state interpreters to attain licensure. To combat the shortage, the board should allow any interpreter with an EIPA score of 4.0 to be eligible for full licensure in K through 12 settings.

In response to questions by Co-Chair Lewis, Ms. Janes stated that, in May 2024, when the proposed amendments to the administrative regulation were developed, the board consisted of four (4) members and voted unanimously to remove the EIPA as an option for full licensure. Ms. Bozeman stated that the vote was split. Ms. Janes stated that the May vote was unanimous; the vote in September on the proposed Amended After Comments version of this administrative regulation was not unanimous but did receive majority approval from the board.

In response to questions by Representative Frazier Gordon, Ms. Johnson stated that the authorizing statute required a nationally recognized certification for full licensure. Ms. Janes stated that research conducted since the original administrative regulation was filed in 2012 led to changes in practice for interpreters, necessitating the restructuring of the licensure process. Statutory changes would be necessary in order for the board to accept an EIPA certificate for full licensure. Ms. Johnson stated the board currently consisted of six (6) members, but had fluctuated in membership in the previous few years.

In response to a question by Senator Yates, Ms. Janes stated an EIPA score of 3.5 or higher would remain part of a pathway towards full licensure. Ms. Johnson stated that an EIPA certificate could be utilized for special types of interpreters. Ms. Bozeman stated that Kentucky's current licensure requirements exceeded those of seven (7) surrounding states. Ms. Johnson stated that conflicts in national and state testing cycles, coupled with complications from the coronavirus (COVID-19) pandemic, had caused prolonged delays in previous years, but an interpreter seeking full licensure should now be able to complete all requirements within five (5) years.

In response to questions by Co-Chair West, Ms. Janes stated that EIPA had been available as an assessment tool since 2012. In 2017, it was no longer nationally recognized. Ms. Johnson stated that EIPA was never recognized as a certification and was an assessment certificate.

In response to questions by Co-Chair West, Ms. Janes stated that deferral would create problems because the current version of this administrative regulation included licensure based on examinations that were no longer available.

In response to questions by Senator Yates, Ms. Johnson stated interpreters had been able to be licensed with just an EIPA certificate since 2017. Ms. Janes stated that there were multiple paths towards certification. Co-Chair West stated that the board could file an agency amendment, defer this administrative regulation to the December meeting of this subcommittee, or allow this administrative regulation to move on to the committee of jurisdiction.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 039:040. Fees.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the

amendments were approved.

201 KAR 039:050. Renewal and reinstatement of full licenses.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph, Sections 1 through 4, and incorporated material to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 039:060. Reinstatement of full license subject to disciplinary action.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 039:070. Application and qualifications for temporary licensure and extensions.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph, Sections 1 through 6, and incorporated material to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 039:075. Supervision.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 039:090. Continuing education unit requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 8 and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 039:100. Complaint procedure.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 1 through 7; and incorporated material to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 039:120. Code of ethics.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 039:130. Registration for nonresident interpreters.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph, Sections 1 and 2, and incorporated material to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

INDEPENDENT ADMINISTRATIVE BODIES: Kentucky Housing Corporation

202 KAR 002:020. Rural Housing Trust Fund. Samuel Thorner, general counsel, represented the corporation.

Board of Emergency Medical Services

202 KAR 007:201E. Emergency medical responders. Eddie Slone, executive director, and John Wood, counsel, represented the board.

202 KAR 007:301E. Emergency medical technician.

202 KAR 007:330E. Advanced emergency medical technician.

202 KAR 007:401E. Paramedics.

202 KAR 007:560E. Ground vehicle staff.

JUSTICE AND PUBLIC SAFETY CABINET: Parole Board

501 KAR 001:080. Parole board policies and procedures. Seth Fawns, staff attorney, and Cyndi Heddleston, chair, represented the board.

TRANSPORTATION CABINET: Office for Civil Rights and Small Business Development: Office of Minority Affairs

600 KAR 004:010. Certification of disadvantaged business enterprises. Jon Johnson, assistant general counsel, and Tony Youssefi, executive director, represented the office.

EDUCATION AND LABOR CABINET: Board of Education: Department of Education: General Administration

702 KAR 001:116. Annual in-service training of district board members. Todd Allen, deputy commissioner and general counsel, represented the board.

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.

Facilities Management

702 KAR 004:090. Property disposal.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 through 6, 8, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Learning Programs Development: Office of Instruction

704 KAR 003:305. Minimum requirements for high school graduation.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Technical Education: Office of Instruction

780 KAR 003:072. Attendance, compensatory time, and leave for certified and equivalent service.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 4 and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

780 KAR 003:080. Extent and duration of school term, use of school days and extended employment.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Human Resource Management: Administration

900 KAR 001:009. Employee Access to Federal Tax Information (FTI). Jay Klein, assistant director, represented the office.

Department for Public Health: Food and Cosmetics

902 KAR 045:012. Hemp-derived cannabinoid product retail and food service establishment requirements. Julie Brooks, regulation coordinator, and Dr. Steven Stack, commissioner, represented the department. Delphia and John Taylor, Kentucky Hemp Association, and Shannon Stiglitz, senior vice president, Kentucky Retail Association, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Ms. Taylor stated that of her 12,000 customers, none had reported any ill effects from use of hemp-derived cannabinoid products. The proposed amendments to this administrative regulation would be cost-prohibitive to small businesses and, according to House Bill 544 from the 2023 Regular Session of the General Assembly, hemp-derived cannabinoid products should not be included as “adult use” products. Fees proposed in this administrative regulation would place an undue financial burden on small businesses and processors.

In response to a question by Co-Chair West, Mr. Taylor stated that hemp-derived cannabinoid products had helped him with his epilepsy. The proposed amendments to this administrative regulation would place unnecessary restrictions on non-intoxicating, hemp-derived cannabinoid products and would increase the difficulty in maintaining availability of products. The agency needed to maintain administrative and regulatory oversight to maintain quality and efficacy, but these proposed fees could be a burden on the hemp industry.

In response to a question by Co-Chair West, Ms. Stiglitz stated that Kentucky Retail Federation opposed the \$2,000 per-retail-location licensing fee, but would support a lower fee to limit the costs to retailers. The high licensing fee would discourage responsible retailers from participating, and there were approximately 316 retailers currently licensed in the state. Kentucky Retail Federation supported the concept of a tiered fee structure to encourage responsible retailer participation.

In response to questions by Co-Chair West, Dr. Stack stated that the cabinet addressed many of the concerns in the agency amendment, and retailers were not required to register more than once. If a manufacturer received licensure for a product, a retailer could sell those products without additional fees. It was necessary that products be registered in order for the cabinet to track the products they were monitoring for compliance and public safety. Ms. Brooks stated that the agency amendment changed the previous language regarding total THC (tetrahydrocannabinol) after stakeholder input.

In response to questions by Senator Yates, Ms. Brooks stated that the deletion was in reference to THC isomer levels.

In response to questions by Co-Chair West, Dr. Stack stated that concentrations of THC isomers (Delta 8, Delta 9, and Delta 10) in the regulated hemp-derived cannabinoid products were not naturally occurring at high levels in cultivated hemp, but were chemically altered for the final products. There were concerns regarding the proper regulation of these products to ensure that additional chemicals or solvents were not included in hemp-derived cannabinoid products, and that products were properly and responsibly labelled and tested. The cabinet anticipated exponential growth in registered facilities; therefore, adequate fees were necessary to fund this program. The \$2,000 per-retail-location licensing fee would apply to all retailers selling hemp-derived cannabinoid products, and the \$250 per-product registration fee would not be payable by a retailer if the product was licensed and registered in Kentucky by the manufacturer.

In response to questions by Senator Yates, Ms. Brooks stated that language regarding levels of non-intoxicating THC found in trace amounts in CBD (Cannabidiol) oils was deleted in the proposed amendment. Dr. Stack stated that enforcement could suffer regarding applicable substances without standardized requirements regarding dosage and other safety matters. A balanced approach was needed.

In response to questions from Co-Chair West, Dr. Stack stated that under this proposed administrative regulation, retailers of hemp-derived cannabinoid products would be charged the \$2,000 license fee for each discreet location selling the products. Ms. Brooks stated

that criteria used to assess products for approval were established by House Bill 544 from the 2023 Regular Session of the General Assembly and by other, broader statutes.

In response to questions by Co-Chair West, Ms. Taylor stated that, while she agreed with the cabinet’s concerns about “bad actors” in the industry, she was also concerned about the language that THC isomers were “synthetic”, because trace levels of these chemicals appeared naturally in hemp plants. She was careful with the products she sold because of concerns over efficacy and safety. CBD products should be exempt from this proposed administrative regulation, and restrictions should apply only to adult-use products. Mr. Taylor stated that he agreed that the cabinet needed funding to operate this program, and the cabinet should work with stakeholders to develop funding strategies. There was a concern that product analyses were being forged. Ms. Stiglitz stated that CBD products were previously regulated by the Department for Agriculture, and the cabinet later assumed this authority. Under House Bill 544 from the 2023 Regular Session of the General Assembly, only adult-use intoxicating hemp-derived cannabinoid products were required to be registered. Ms. Brooks stated that KRS 217.039 authorized the cabinet to regulate all ingestible and cosmetic cannabinoid products. According to 902 KAR 045:021, processors and manufacturers were required to register annually for a permit and pay the product registration fee, but language was not clear as to whether the registration fee was paid once or yearly. However, that administrative regulation had already been referred to the Interim Joint or Standing Committees on Health Services for further discussion. Co-Chair West stated that the cabinet should amend 902 KAR 45:021 to clarify the language regarding registration fees for processors and manufacturers through an amendment at the committee of jurisdiction.

The following amendments were approved by this subcommittee at the October 15 meeting: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to clarify requirements. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Eligibility

907 KAR 020:035. Spousal impoverishment and nursing facility requirement for Medicaid. Jonathan Scott, chief legislative and regulatory officer, represented the department.

Department for Community Based Services: Protection and Permanency: Child Welfare

922 KAR 001:050. State funded adoption assistance. Andrea Day, director, Child Care Division; Rachael Ratliff, staff assistant; and Todd Trapp, director, Division of Family Support, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 6 to clarify requirements. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 001:060. Federal Title IV-E adoption assistance.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 8 to clarify requirements. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 001:470. Central registry.

A motion was made and seconded to approve the following amendments: 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 amendments were approved.

Daycare

922 KAR 002:090. Child-care center licensure.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and

Sections 1, 6, 8 through 11, 13, and 15 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 9 to include drills in the requirement for a written plan and diagram outlining the course of action in the event of a natural or manmade disaster, including to add a requirement to provide this to all staff, volunteers, and visitors; and (3) to amend Section 10 to include staff, volunteers, and visitors under the director's responsibilities pertaining to the development, implementation, and monitoring of program policies and procedures. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 002:120. Child-care center health safety standards.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2, 4, 3, 7, 8, 10, 12, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: 501 KAR 6:410: In response to a question by Representative Frazier Gordon, Co-Chair West stated that the Department of Corrections refused the subcommittee's request to appear and discuss 501 KAR 6:410. This administrative regulation had been deferred prior to this subcommittee meeting. This administrative regulation was tentatively on this subcommittee's agenda for the December meeting.

In response to a question by Co-Chair West, Senator Thayer stated that taxpayers should not be expected to fund transgender surgeries for those criminally convicted and incarcerated.

The following administrative regulations were deferred or removed from the November 13, 2024, subcommittee agenda:

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.

Aerospace

013 KAR 006:010. Aviation training scholarships.

013 KAR 006:020. Aviation equipment grants.

PERSONNEL CABINET: Classified

101 KAR 002:210E. 2024 and 2025 Plan year handbooks for the Public Employee Health Insurance Program.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Ad Valorem Tax; Administration

103 KAR 005:200. Valuation of multi-unit rental housing subject to government restriction on use.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:030. License transfer and Non-Resident Pharmacist License.

201 KAR 002:050. License and permits; fees.

201 KAR 002:210. Patient records, drug regimen review, patient counseling, and final product verification.

201 KAR 002:465. Non-Resident Pharmacy applications and waivers.

Board of Dentistry

201 KAR 008:610. Dental community health workers.

Board of Nursing

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

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Permits: Bond and Insurance Requirements

405 KAR 010:001. Definitions for 405 KAR Chapter 010.

405 KAR 010:015. General bonding provisions.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 006:410. Corrections policies and procedures: inmate life and issues.

EDUCATION AND LABOR CABINET: Board of Education: Department of Education: Office of Learning Programs Development: Office of Instruction

704 KAR 003:535. Full-time enrolled online, virtual, and remote learning programs.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: Credit Unions

808 KAR 003:050. Conduct of credit unions.

General

808 KAR 015:050. Out-of-state trust companies operating in Kentucky.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Sanitation

902 KAR 010:120. Kentucky public swimming and bathing facility operations.

902 KAR 010:122. Repeal of 902 KAR 010:121 and 902 KAR 010:190.

902 KAR 010:123. Kentucky public swimming and bathing facilities construction requirements.

902 KAR 010:125. Kentucky public swimming and bathing facility safety requirements.

902 KAR 010:127. Kentucky public beach requirements.

Kentucky Early Intervention System

902 KAR 030:200. Coverage and payment for services.

Department for Medicaid Services

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

Hospital Service Coverage and Reimbursement

907 KAR 010:015. Payments for outpatient hospital services.

Behavioral Health

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

Department for Community Based Services: Family Support: Supplemental Nutrition Assistance Program

921 KAR 003:030. Application process. Andrea Day, director, Child Care Division; Rachael Ratliff, staff assistant; and Todd Trapp, director, Division of Family Support, represented the department.

In response to a question by Co-Chair West, Ms. Ratliff agreed to defer consideration of this administrative regulation to the December meeting of this subcommittee.

A motion was made and seconded to defer this administrative regulation. Without objection, and with agreement of the agency, this administrative regulation was deferred.

Protection and Permanency: Child Welfare

922 KAR 001:490. Background checks for foster and adoptive parents and relative and fictive kin caregivers.

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Adult Services

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

The subcommittee adjourned at 3:35 p.m. The next meeting of this subcommittee was tentatively scheduled for December 9, 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 NATURAL RESOURCES AND ENERGY

Meeting of November 7, 2024

The Interim Joint Committee on Natural Resources and Energy met on November 7, 2024, and a quorum was present. The following administrative regulation was available for consideration having been referred to the Committee on October 2, 2024, pursuant to KRS 13A.290(6):

301 KAR 001:410

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the November 7, 2024, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION

Meeting of November 8, 2024

The Interim Joint Committee on Education met on November 8, 2024 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on November 6, 2024, pursuant to KRS 13A.290(6):

739 KAR 001:070 Proposed
739 KAR 001:060 Proposed
102 KAR 001:370 Proposed
102 KAR 001:350 Proposed
102 KAR 001:138 Proposed
016 KAR 009:100 Proposed
016 KAR 009:080 Proposed
016 KAR 009:010 Proposed
016 KAR 002:030 Proposed
016 KAR 001:030 Proposed

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 8, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON TRANSPORTATION

Meeting of November 8, 2024

The IJC on Transportation met on November 8, 2024 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on October 2, 2024, pursuant to KRS 13A.290(6):

601 KAR 009:220

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 8, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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INTERIM JOINT COMMITTEE ON HEALTH SERVICES
Meeting of November 18, 2024

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health Services for its meeting of November 18, 2024 having been referred to the Committee on November 6, 2024, pursuant to KRS 13A.290(6):

November 6, 2024

201 KAR 020:056 Proposed
201 KAR 020:215 Proposed
201 KAR 020:230 Proposed
201 KAR 020:390 Proposed
902 KAR 045:001 Emergency
902 KAR 045:012 Emergency
902 KAR 045:021 Emergency
902 KAR 045:031 Emergency
902 KAR 045:031 Proposed
915 KAR 001:020 Proposed

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

902 KAR 045:001 Proposed
902 KAR 045:021 Proposed
915 KAR 001:010 Proposed

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the November 18, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

902 KAR 45:001. Definitions for hemp-derived cannabinoid products.

RELATES TO:

After "2023 Ky Acts ch. 78", delete ", 7 C.F.R. 990.1".

Section 1(14)

Delete subsection (14) in its entirety.

902 KAR 45:021. Hemp-derived cannabinoid product registration, processing, manufacturing, storage and distribution requirements.

Page 4

Section 1(5)(a)

Line 5

After "(a)", insert "An initial".
Delete "A".

Page 4

Section 1(6)

Line 9

After "product registration", insert "and fee".

Page 4

Section 1(6)(b)

Line 11

After "directions for use", insert the following:
: or
(c) To the product label

915 KAR 1:010. Initial and renewal applications for cannabis business licenses

Page 11

Section 3(8)

Line 10

After "date of the notice.", insert the following:

An applicant shall use the hearing request form prescribed by the cabinet and made available through the website for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>. An applicant shall submit the hearing request form to the cabinet in the manner prescribed by the form's instructions.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 51st year of the *Administrative Register of Kentucky*, from July 2024 through June 2025.

Locator Index - Effective Dates

F - 2

Lists all administrative regulations published or continuing through the KRS Chapter 13A review process during this Register year. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other actions that may affect the regulation.

NOTE: Regulations listed with a “50 Ky.R.” notation are regulations that were originally published in last year’s issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the Register year ended.

KRS Index

F - 10

A cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication during this Register year.

Certifications Index

F - 18

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this Register year.

Technical Amendment Index

F - 19

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

F - 20

A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 51. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another *Register* year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior *Registers*, please visit our online [Administrative Registers of Kentucky](#).

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS

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

013 KAR 002:120E	50 Ky.R. 2349	4-30-2024
013 KAR 002:130E	50 Ky.R. 2352	4-30-2024
016 KAR 001:030E	51 Ky.R. 191	7-15-2024
Replaced	329	11-8-2024
016 KAR 002:030E	51 Ky.R. 195	7-15-2024
Replaced	333	11-8-2024
016 KAR 009:010E	51 Ky.R. 197	7-8-2024
As Amended	645	9-10-2024
Replaced	851	11-8-2024
016 KAR 009:030E	51 Ky.R. 10	5-31-2024
016 KAR 009:080E	51 Ky.R. 200	7-8-2024
Replaced	851	11-8-2024
016 KAR 009:100E	51 Ky.R. 204	7-8-2024
031 KAR 002:010E	50 Ky.R. 2147	4-15-2024
As Amended	51 Ky.R. 218	7-9-2024
Replaced	239	11-5-2024
031 KAR 003:041E	50 Ky.R. 2150	4-15-2024
As Amended	51 Ky.R. 219	7-9-2024
Replaced	240	11-5-2024
031 KAR 004:031E	50 Ky.R. 2152	4-15-2024
Am Comments	51 Ky.R. 220	7-9-2024
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031 KAR 004:220E	50 Ky.R. 2154	4-15-2024
As Amended	51 Ky.R. 221	7-9-2024
Replaced	220	11-5-2024
031 KAR 005:026E	50 Ky.R. 2158	4-15-2024
As Amended	51 Ky.R. 223	7-9-2024
Replaced	492	8-22-2024
031 KAR 005:040E	50 Ky.R. 2161	4-15-2024
As Amended	51 Ky.R. 224	7-9-2024
101 KAR 002:210E	51 Ky.R. 620	9-13-2024
200 KAR 005:021E	51 Ky.R. 12	5-16-2024
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201 KAR 028:240E	50 Ky.R. 2354	5-14-2024
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201 KAR 036:100E	50 Ky.R. 1649	9-14-2024
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202 KAR 007:201E	51 Ky.R. 622	9-3-2024
202 KAR 007:301E	51 Ky.R. 626	9-3-2024
202 KAR 007:330E	51 Ky.R. 630	9-3-2024
202 KAR 007:401E	51 Ky.R. 634	9-3-2024

202 KAR 007:560E	51 Ky.R. 640	9-3-2024
501 KAR 006:330E	50 Ky.R. 2356	5-15-2024
Expired; Ordinary SOC not filed by deadline		9-13-2024
501 KAR 006:430E	50 Ky.R. 2358	5-15-2024
502 KAR 010:120E	51 Ky.R. 1067	10-30-2024
803 KAR 002:110E	51 Ky.R. 847	9-30-2024
803 KAR 025:089E	50 Ky.R. 2360	5-14-2024
807 KAR 005:015E	51 Ky.R. 14	5-31-2024
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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
Am Comments	51 Ky.R. 226	7-15-2024
915 KAR 001:020E	50 Ky.R. 2383	4-18-2024
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

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011 KAR 004:080		
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011 KAR 015:090		
Amended	50 Ky.R. 2240	
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011 KAR 015:110		
Amended	50 Ky.R. 2245	
As Amended	51 Ky.R. 488	9-17-2024
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		
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016 KAR 002:030		
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016 KAR 002:110	50 Ky.R. 2464	
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016 KAR 002:140	50 Ky.R. 2466	
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016 KAR 002:160		
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016 KAR 002:170	50 Ky.R. 2469	
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016 KAR 002:200	50 Ky.R. 2471	
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016 KAR 004:020		
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Amended	51 Ky.R. 337		103 KAR 005:200	51 Ky.R. 603	
As Amended	851	11-8-2024	104 KAR 001:010		
016 KAR 009:100			Amended	50 Ky.R. 78	
Amended	51 Ky.R. 341		As Amended	51 Ky.R. 37	10-1-2024
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017 KAR 004:030			Amended	50 Ky.R. 80	
Amended	51 Ky.R. 79		As Amended	51 Ky.R. 38	10-1-2024
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017 KAR 006:020	50 Ky.R. 984		Amended	50 Ky.R. 82	
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017 KAR 006:030	50 Ky.R. 986		As Amended	51 Ky.R. 40	10-1-2024
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030 KAR 002:011(r)	51 Ky.R. 1222		Amended	50 Ky.R. 2259	
030 KAR 007:011	50 Ky.R. 2110	10-1-2024	As Amended	51 Ky.R. 247	11-5-2024
031 KAR 002:010			105 KAR 001:120		
Amended	50 Ky.R. 2247		Amended	50 Ky.R. 2262	
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031 KAR 003:041	50 Ky.R. 2319		105 KAR 001:130		
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031 KAR 004:031	50 Ky.R. 2321		105 KAR 001:140		
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031 KAR 005:026			Amended	50 Ky.R. 2265	
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102 KAR 001:340			Amended	51 Ky.R. 518	
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Amended	51 Ky.R. 721		201 KAR 027:006	50 Ky.R. 2481	
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201 KAR 036:050			Amended	50 Ky.R. 1761	7-18-2024
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201 KAR 036:100	50 Ky.R. 1798	6-18-2024	Amended	50 Ky.R. 2292	
201 KAR 039:001			As Amended	51 Ky.R. 268	11-5-2024
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As Amended	1095		Amended	50 Ky.R. 1568	6-6-2024
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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13B.030	040 KAR 005:010	78.545	105 KAR 001:130
14.025	030 KAR 002:011		105 KAR 001:142
14A.4-010	806 KAR 009:360	78.5520	105 KAR 001:130
15.266	040 KAR 012:010	78.615	105 KAR 001:130
15.268	040 KAR 012:010	78.625	105 KAR 001:142
15.272	040 KAR 012:010	78.650	105 KAR 001:130
15.274	040 KAR 012:010	78.782	105 KAR 001:142
15.530 - 15.590	503 KAR 003:140		105 KAR 001:445
16.505 - 16.652	105 KAR 001:140	83A.087	500 KAR 001:010
15A.160	502 KAR 012:010		500 KAR 001:021
16.132	502 KAR 012:010	87A.088	500 KAR 001:010
16.645	105 KAR 001:142		500 KAR 001:021
17.165	910 KAR 001:241	103.200	200 KAR 015:010
	922 KAR 001:470	103.2101	200 KAR 015:010
17.500-580	922 KAR 001:490	103.282	200 KAR 015:010
18A.095	105 KAR 001:140	103.286	200 KAR 015:010
18A.10	105 KAR 001:140	116.048	921 KAR 003:030
18A.030	101 KAR 002:086	117.383	031 KAR 004:230
	101 KAR 002:210	118.105	030 KAR 002:011
18A.032	101 KAR 002:086	131.130	103 KAR 005:200
18A.095	900 KAR 001:009	132.191	103 KAR 005:200
18A.110	101 KAR 002:086	132.420	103 KAR 005:200
18A.225	101 KAR 002:210	148.0222	603 KAR 005:350
18A.2254	101 KAR 002:210	150.010	301 KAR 001:410
27A.090	922 KAR 001:490		301 KAR 002:041
36.042	703 KAR 005:240		301 KAR 002:081
38.030	202 KAR 007:330		301 KAR 002:082
39	202 KAR 007:330		301 KAR 003:005
39A.050	202 KAR 007:330	150.015	301 KAR 002:081
40.360	017 KAR 004:030		301 KAR 002:082
40.362	017 KAR 004:030	150.070	301 KAR 001:410
40.364	017 KAR 004:030	150.170	301 KAR 002:041
40.366	017 KAR 004:030		301 KAR 003:005
42.014	200 KAR 014:091	150.175	301 KAR 001:410
42.500	200 KAR 014:011		301 KAR 003:005
	200 KAR 014:081	150.180	301 KAR 002:041
	200 KAR 014:091	150.183	301 KAR 002:081
42.505-545	200 KAR 014:091		301 KAR 002:082
42.520	200 KAR 014:011	150.186	301 KAR 002:082
	200 KAR 014:081	150.190	301 KAR 002:081
42.525	200 KAR 014:011	150.195	301 KAR 002:081
	200 KAR 014:081		301 KAR 002:082
45A.045	200 KAR 005:021	150.235	301 KAR 001:410
45A.425	702 KAR 004:090		301 KAR 002:081
49	502 KAR 012:010		301 KAR 002:082
61.315	500 KAR 001:010	150.280	301 KAR 002:041
	500 KAR 001:021	150.320	301 KAR 002:081
	500 KAR 001:030		301 KAR 002:082
61.505	105 KAR 001:445	150.330	301 KAR 002:081
61.505 - 61.705	105 KAR 001:140		301 KAR 002:082
61.510	105 KAR 001:451		301 KAR 002:225
61.543	105 KAR 001:451	150.340	301 KAR 002:225
61.552	105 KAR 001:130	150.360	301 KAR 002:081
	105 KAR 001:451	150.370	301 KAR 002:081
61.560	105 KAR 001:130	150.390	301 KAR 003:005
61.580	105 KAR 001:130	150.445	301 KAR 001:410
61.592	105 KAR 001:130	150.603	301 KAR 002:225
61.598	105 KAR 001:142	150.620	301 KAR 001:410

KRS SECTION	REGULATION	KRS SECTION	REGULATION
150.630	301 KAR 002:041		016 KAR 009:080
150.990	301 KAR 001:410		016 KAR 009:100
	301 KAR 002:041	161.048	016 KAR 009:010
	301 KAR 002:081		016 KAR 009:030
	301 KAR 002:082		016 KAR 009:080
151	922 KAR 002:120		016 KAR 009:100
156.010	704 KAR 003:365	161.100	016 KAR 002:030
156.035	704 KAR 003:365	161.102	016 KAR 001:030
156.070	702 KAR 004:090	161.120	016 KAR 001:030
	704 KAR 003:313	161.1211	016 KAR 009:080
	704 KAR 003:535	161.220	102 KAR 001:320
	704 KAR 008:130		102 KAR 001:340
156.111	016 KAR 009:080		102 KAR 001:350
156.160	702 KAR 004:090		102 KAR 001:370
	704 KAR 003:305		102 KAR 001:380
	704 KAR 003:313	161.440	102 KAR 001:138
	704 KAR 003:535		102 KAR 001:350
	704 KAR 008:130	161.507	102 KAR 001:350
156.808	780 KAR 003:072	161.515	102 KAR 001:350
	780 KAR 003:080	161.545	102 KAR 001:350
157	922 KAR 002:090	161.5465	102 KAR 001:350
158.030	922 KAR 002:090	161.547	102 KAR 001:350
	922 KAR 002:120	161.548	102 KAR 001:350
158.070	704 KAR 003:535	161.549	102 KAR 001:350
158.140	704 KAR 003:305	161.560	102 KAR 001:195
158.141	704 KAR 003:305	161.580	102 KAR 001:138
158.142	704 KAR 003:305	161.633	102 KAR 001:380
158.1411	703 KAR 003:305	161.634	102 KAR 001:380
158.1413	703 KAR 003:305	161.635	102 KAR 001:370
	704 KAR 003:535		102 KAR 001:380
158.150	703 KAR 005:240	161.636	102 KAR 001:370
158.4416	704 KAR 003:535		102 KAR 001:380
158.622	704 KAR 003:305	161.643	102 KAR 001:195
158.645	703 KAR 003:305	161.700	102 KAR 001:320
	704 KAR 003:313		102 KAR 001:380
	704 KAR 008:130	161.716	102 KAR 001:320
158.6451	703 KAR 003:305		102 KAR 001:380
	703 KAR 005:240	162.010	702 KAR 004:090
	704 KAR 003:313	164.7011	013 KAR 006:010
	704 KAR 003:535		013 KAR 006:020
	704 KAR 008:130	164.7013	013 KAR 006:010
158.6453	703 KAR 005:080		013 KAR 006:020
	703 KAR 005:240	164.7015	013 KAR 006:010
	704 KAR 003:313	164.7017	013 KAR 006:020
	704 KAR 008:130	164.772	815 KAR 035:060
158.6455	703 KAR 005:080	164A.580	739 KAR 001:060
	703 KAR 005:240		739 KAR 001:070
160.151	922 KAR 001:470	164A.590	739 KAR 001:060
160.160	702 KAR 004:090	164A.595	739 KAR 001:070
160.180	702 KAR 001:116	164A.600	739 KAR 001:070
160.290	704 KAR 003:313	174.020	603 KAR 005:350
	704 KAR 008:130	183	500 KAR 001:021
160.345	016 KAR 009:080	183.881	500 KAR 001:010
	704 KAR 003:535	186	601 KAR 009:220
160.380	016 KAR 001:030		922 KAR 002:120
	704 KAR 003:535	186A.060	601 KAR 023:050
	922 KAR 001:470	186A.120	601 KAR 023:050
160.431	702 KAR 003:320	186A.125	601 KAR 023:050
161.010 - 161.100	016 KAR 001:030	186A.170	601 KAR 023:050
161.020	016 KAR 002:030	189.125	922 KAR 001:350
	016 KAR 007:010		922 KAR 002:120
	016 KAR 009:030	189.222	603 KAR 005:066
161.020	702 KAR 003:320	189.281	603 KAR 005:350
161.027	016 KAR 009:080	189.337	603 KAR 005:050
161.028	016 KAR 002:030	189.390	603 KAR 005:350
	016 KAR 007:011	189.515	603 KAR 005:350
	016 KAR 009:010	189.520	603 KAR 005:350
	016 KAR 009:030	189.910-189.950	202 KAR 007:560
	016 KAR 009:080	190	601 KAR 009:220
	016 KAR 009:100	194A.005	900 KAR 001:009
161.030	016 KAR 002:030		922 KAR 001:350
	016 KAR 007:011		922 KAR 001:490
	016 KAR 009:010	194A.050	902 KAR 004:030
	016 KAR 009:030	194A.060	922 KAR 001:350

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	922 KAR 002:160	211.490	902 KAR 028:010
	922 KAR 005:120		902 KAR 028:020
194.061	910 KAR 001:241		902 KAR 028:030
194A.062	900 KAR 001:009		902 KAR 028:040
194A.380-383	922 KAR 001:470	211.492	902 KAR 028:010
194A.505	907 KAR 020:035		902 KAR 028:020
194A.540	201 KAR 020:215		902 KAR 028:030
194A.700 – 729	910 KAR 001:241		902 KAR 028:040
198A.740 - 198A.750	202 KAR 002:020	211.494	902 KAR 028:010
199.011	922 KAR 001:350		902 KAR 028:020
	922 KAR 001:490		902 KAR 028:030
	922 KAR 002:090		902 KAR 028:040
	922 KAR 002:120	211.496	902 KAR 028:010
199.430	922 KAR 001:350		902 KAR 028:020
199.462	922 KAR 001:490		902 KAR 028:030
199.466	922 KAR 001:470		902 KAR 028:040
199.470	922 KAR 001:490	211.600	502 KAR 012:010
199.500	922 KAR 001:060	211.684	922 KAR 001:470
199.502	922 KAR 001:060		922 KAR 001:490
199.555	922 KAR 001:050	211.990	902 KAR 010:120
	922 KAR 001:060		902 KAR 010:123
199.557	922 KAR 001:060		902 KAR 010:127
199.802	922 KAR 001:350	213.046	921 KAR 001:400
199.894	922 KAR 002:090	214.010	922 KAR 002:090
	922 KAR 002:120	214.036	922 KAR 002:090
	922 KAR 002:160		922 KAR 002:160
199.895	922 KAR 002:090	214.155	902 KAR 003:040
199.8951	922 KAR 002:120	214.625	902 KAR 002:020
199.896	922 KAR 001:470	214.645	902 KAR 002:020
	922 KAR 002:120	214.990	902 KAR 002:020
	922 KAR 002:160	215.520	902 KAR 002:020
199.896-898	922 KAR 002:090	216.510	910 KAR 001:210
199.8962	922 KAR 002:120	216.2920	902 KAR 004:105
199.898	922 KAR 002:160	216.2955	922 KAR 005:120
199.8982	922 KAR 001:470	216.300	910 KAR 001:241
	922 KAR 002:160	216.380	907 KAR 010:015
199.899	922 KAR 002:160	216.535	910 KAR 001:210
200.672	902 KAR 030:200	216.540 - 216.543	910 KAR 001:210
202B.010	922 KAR 001:050	216.595	910 KAR 001:241
205.201	910 KAR 001:210	216.789	910 KAR 001:241
205.520	907 KAR 001:028	216.793	910 KAR 001:241
	907 KAR 010:015	216B.015	502 KAR 012:010
	907 KAR 020:035		902 KAR 002:020
205.560	907 KAR 001:028		902 KAR 002:040
205.619	907 KAR 020:035		922 KAR 005:120
205.637	907 KAR 010:015	216B.020	202 KAR 007:545
205.710-205.802	921 KAR 001:400	216B.400	502 KAR 012:010
205.990	921 KAR 001:400	216B.990	502 KAR 012:010
209	922 KAR 005:120	217	922 KAR 002:120
209.020	502 KAR 012:010	217.015	201 KAR 002:210
209.030	502 KAR 012:010	218A.010	016 KAR 001:030
	910 KAR 001:210		201 KAR 002:210
	910 KAR 001:241	218A.171	201 KAR 020:057
209A.020	502 KAR 012:010	218A.172	201 KAR 020:057
209A.100	502 KAR 012:010	218A.202	201 KAR 020:057
209A.110	502 KAR 012:010	218A.205	201 KAR 005:005
209A.130	502 KAR 012:010		201 KAR 005:010
211.015	902 KAR 010:120		201 KAR 020:056
	902 KAR 010:123		201 KAR 020:057
	902 KAR 010:125		201 KAR 020:215
	902 KAR 010:127	224.01-010	401 KAR 047:110
211.090	902 KAR 004:030		401 KAR 048:320
	902 KAR 010:123	224.10-100	401 KAR 047:110
	902 KAR 010:127		401 KAR 048:320
211.122	902 KAR 004:105	224.10-105	401 KAR 047:110
211.180	902 KAR 004:030		401 KAR 048:320
	902 KAR 010:122	224.40-100	401 KAR 047:110
211.205	902 KAR 010:120		401 KAR 048:320
	902 KAR 010:125	224.40-110	401 KAR 047:110
211.210	902 KAR 010:123		401 KAR 048:320
	902 KAR 010:127	224.40-120	401 KAR 047:110
211.220	902 KAR 010:123		401 KAR 048:320
	902 KAR 010:127	224.40-305	401 KAR 047:110
211.350 - 211.380	922 KAR 002:120		401 KAR 048:320

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224.40-310	401 KAR 047:110	230.310	810 KAR 004:030
	401 KAR 048:320	230.320	810 KAR 004:030
224.40-315	401 KAR 047:110	258.015	922 KAR 001:350
	401 KAR 048:320	258.035	922 KAR 001:350
224.40-320	401 KAR 047:110	258.043	201 KAR 016:762
	401 KAR 047:320	258.065	301 KAR 002:081
224.40-325	401 KAR 047:110		301 KAR 002:082
	401 KAR 048:320		902 KAR 002:020
224.40-330	401 KAR 047:110	258.085	301 KAR 002:081
	401 KAR 048:320		301 KAR 002:082
224.40-340	401 KAR 047:110	258.990	902 KAR 002:020
	401 KAR 048:320	278.030	807 KAR 005:015E
224.40-605	401 KAR 047:110	278.040	807 KAR 005:015E
	401 KAR 048:320	278.5464	807 KAR 005:015E
224.40-650	401 KAR 047:110	281A.120	502 KAR 010:120
	401 KAR 048:320	281A.130	502 KAR 010:120
224.43-010	401 KAR 048:320	281A.150	502 KAR 010:120
224.43-020	401 KAR 048:320	281A.160	502 KAR 010:120
224.43-040	401 KAR 047:110	281A.170	502 KAR 010:120
224.43-020	401 KAR 047:110	286.3-146	808 KAR 015:050
224.43-070	401 KAR 047:110	286.6-095	808 KAR 003:050
	401 KAR 048:320	286.6-100	808 KAR 003:050
224.43-310	401 KAR 047:110	286.6-225	808 KAR 003:050
	401 KAR 048:320	286.6-585	808 KAR 003:050
224.43-315	401 KAR 047:110	286.6-715	808 KAR 003:050
	401 KAR 048:320	286.9-010	808 KAR 009:010
224.43-330	401 KAR 047:110	286.9-075	808 KAR 009:010
	401 KAR 048:320	286.9-100	808 KAR 009:010
224.43-340	401 KAR 047:110	286.9-140	808 KAR 009:010
	401 KAR 048:320	304.1-050	806 KAR 009:360
224.43-345	401 KAR 047:110	304.2-290	806 KAR 009:360
	401 KAR 048:320	304.2-310	806 KAR 009:360
224.43-350	401 KAR 047:110		806 KAR 017:570
	401 KAR 048:320	304.2-320	806 KAR 017:570
224.70-100	401 KAR 047:110	304.3-240	806 KAR 017:570
	401 KAR 048:320	304.9-020	806 KAR 009:360
224.70-110	401 KAR 047:110	304.9-053	806 KAR 009:360
	401 KAR 048:320	304.9-054	806 KAR 009:360
224.99-010	401 KAR 047:110	304.9-055	806 KAR 009:360
	401 KAR 048:320	304.9-133	806 KAR 009:360
224.99-020	401 KAR 047:110	304.10-030	806 KAR 009:360
	401 KAR 048:320	304.10-040	806 KAR 009:360
227A.010	815 KAR 035:060	304.12-020	806 KAR 017:570
227A.060	815 KAR 035:060	304.14-120	806 KAR 017:570
227A.100	815 KAR 035:060	304.14-640	907 KAR 020:035
229.011	201 KAR 027:006	301.14-642	907 KAR 020:035
	201 KAR 027:023	304.14-500 - 3014.14-550	806 KAR 017:570
229.025	201 KAR 027:006	304.17-311	806 KAR 017:570
	201 KAR 027:023	304.17A-005	806 KAR 009:360
	201 KAR 027:041		806 KAR 017:570
	201 KAR 027:106	304.17A-162	806 KAR 009:360
229.031	201 KAR 027:006	304.17A-163	806 KAR 009:360
	201 KAR 027:106	304.17A-165	806 KAR 009:360
229.035	201 KAR 027:006	304.17A-535	806 KAR 009:360
229.061	201 KAR 027:006	304.17A-607	806 KAR 009:360
229.091	201 KAR 027:106	304.17A-617	806 KAR 009:360
229.155	201 KAR 027:006	304.17A-633	806 KAR 009:360
	201 KAR 027:106	304.18-034	806 KAR 017:570
229.171	201 KAR 027:006	304.28-205	806 KAR 017:570
	201 KAR 027:023	304.32-275	806 KAR 017:570
	201 KAR 027:041	304.33-030	806 KAR 017:570
	201 KAR 027:106	304.39-110	603 KAR 005:350
229.190	201 KAR 027:006	304.40-075	201 KAR 008:563
	201 KAR 027:106	304.99-020	806 KAR 009:360
229.200	201 KAR 027:006	309.300	201 KAR 039:001
	201 KAR 027:023	309.301	201 KAR 039:001
	201 KAR 027:106		201 KAR 039:130
229.991	201 KAR 027:006	309.304	201 KAR 039:001
230.215	810 KAR 002:070		201 KAR 039:030
	810 KAR 004:030		201 KAR 039:050
230.240	810 KAR 004:030		201 KAR 039:075
230.260	810 KAR 002:070		201 KAR 039:090
	810 KAR 004:030		201 KAR 039:100
230.290	810 KAR 004:030		201 KAR 039:120

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309.306	201 KAR 039:040		201 KAR 046:100
309.312	201 KAR 039:030	311B.080	201 KAR 046:035
	201 KAR 039:040	311B.100	201 KAR 046:040
	201 KAR 039:050	311B.110	201 KAR 046:040
	201 KAR 039:070		201 KAR 046:060
	201 KAR 039:075	311B.120	201 KAR 046:040
309.314	201 KAR 039:040	311B.130	201 KAR 046:060
	201 KAR 039:050	311B.180	201 KAR 046:040
309.316	201 KAR 039:100	311B.190	201 KAR 046:040
309.318	201 KAR 039:060	313.021	201 KAR 007:610
	201 KAR 039:100	313.030	201 KAR 008:563
	201 KAR 039:120	313.040	201 KAR 008:563
309.460	201 KAR 008:610	313.060	201 KAR 008:563
309.462	201 KAR 008:610	313.080	201 KAR 008:563
309.464	201 KAR 008:610	313.130	201 KAR 008:563
311.282	902 KAR 002:020	313.254	201 KAR 008:563
311.571	902 KAR 002:020	314.011	201 KAR 020:056
311.646	922 KAR 002:120		201 KAR 020:057
311.720	922 KAR 001:350		201 KAR 020:215
311.840	922 KAR 001:350		201 KAR 020:390
311-314	902 KAR 002:040		502 KAR 012:010
311A.010	202 KAR 007:201		922 KAR 001:350
	202 KAR 007:301		922 KAR 002:090
	202 KAR 007:330		922 KAR 002:120
	202 KAR 007:596		922 KAR 002:160
	902 KAR 028:010	314.025	201 KAR 020:390
311A.020	202 KAR 007:330	314.026	201 KAR 020:390
	202 KAR 007:596	314.027	201 KAR 020:390
311A.025	202 KAR 007:201	314.039	201 KAR 020:057
	202 KAR 007:301	314.041	201 KAR 020:230
	202 KAR 007:330	314.042	201 KAR 020:056
	202 KAR 007:401		201 KAR 020:057
	202 KAR 007:596	314.04	201 KAR 020:215
311A.030	202 KAR 007:201	314.051	201 KAR 020:230
	202 KAR 007:401	314.071	201 KAR 030:230
	202 KAR 007:545	314.073	201 KAR 020:215
	202 KAR 007:560		201 KAR 020:230
	202 KAR 007:596	314.091	201 KAR 020:056
311A.050-090	202 KAR 007:201		201 KAR 020:057
	202 KAR 007:301	314.103	201 KAR 020:056
	202 KAR 007:330	314.109	201 KAR 020:056
311A.050-100	202 KAR 007:401	314.161	201 KAR 020:056
311A.095	202 KAR 007:201	314.193	201 KAR 020:057
	202 KAR 007:301	314.195	201 KAR 020:057
	202 KAR 007:330	314.475	201 KAR 020:056
311A.100	202 KAR 007:201		201 KAR 020:057
	202 KAR 007:301	314.991	201 KAR 020:215
	202 KAR 007:330	315.010	201 KAR 002:210
311A.120	202 KAR 007:201		201 KAR 002:370
	202 KAR 007:301		902 KAR 002:020
	202 KAR 007:330	315.020	201 KAR 002:210
	202 KAR 007:401		201 KAR 002:370
311A.130	202 KAR 007:301		201 KAR 002:480
311A.135	202 KAR 007:401	315.030	201 KAR 002:370
311A.140	202 KAR 007:201	315.035	201 KAR 002:470
	202 KAR 007:301	315.036	201 KAR 002:470
	202 KAR 007:330	315.121	201 KAR 002:370
311A.142	202 KAR 007:401	315.191	201 KAR 002:210
311A.145	202 KAR 007:201	315.310	201 KAR 002:480
	202 KAR 007:301	315.340	201 KAR 002:470
	202 KAR 007:330	315.350	201 KAR 002:470
311A.150	202 KAR 007:330	315.405	201 KAR 002:470
311A.160	202 KAR 007:201	315.4104	201 KAR 002:470
311A.165	202 KAR 007:301	316.010	201 KAR 015:110
311A.170	202 KAR 007:401	316.030	201 KAR 015:050
	202 KAR 007:596		201 KAR 015:110
311A.190	202 KAR 007:401	316.125	201 KAR 015:030
	202 KAR 007:545		201 KAR 015:110
	202 KAR 007:560	316.127	201 KAR 015:110
	202 KAR 007:596	316.130	201 KAR 015:030
311A.195	202 KAR 007:330		201 KAR 015:110
311B.020	201 KAR 046:040	316.132	201 KAR 015:030
311B.050	201 KAR 046:040	316.140	201 KAR 015:030
	201 KAR 046:060		201 KAR 015:120

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316.165	201 KAR 015:125		201 KAR 016:735
316.260	201 KAR 015:110		201 KAR 016:737
318	922 KAR 002:120		201 KAR 016:765
320.220	201 KAR 005:005		201 KAR 016:767
	201 KAR 005:010		201 KAR 016:772
320.250	201 KAR 005:005		201 KAR 016:775
	201 KAR 005:010		201 KAR 016:777
320.270	201 KAR 005:005	321.236	201 KAR 016:612
	201 KAR 005:010		201 KAR 016:762
320.280	201 KAR 005:090		201 KAR 016:767
320.310	201 KAR 005:005		201 KAR 016:777
321.175	201 KAR 016:513	321.320	201 KAR 016:510
	201 KAR 016:730		201 KAR 016:515
	201 KAR 016:731		201 KAR 016:517
	201 KAR 016:732	321.352	201 KAR 016:614
	201 KAR 016:735	321.356	201 KAR 016:612
	201 KAR 016:737	321.441	201 KAR 016:520
	201 KAR 016:772		201 KAR 016:530
	201 KAR 016:775		201 KAR 016:590
321.181	201 KAR 016:513		201 KAR 016:612
	201 KAR 016:562	321.442	201 KAR 016:590
	201 KAR 016:730		201 KAR 016:612
	201 KAR 016:731	321.443	201 KAR 016:612
	201 KAR 016:732	321.351	201 KAR 016:562
	201 KAR 016:735	321.990	201 KAR 016:612
	201 KAR 016:737		201 KAR 016:614
	201 KAR 016:772	322.010	201 KAR 018:010
	201 KAR 016:775		201 KAR 018:030
	902 KAR 002:020	322.040	201 KAR 018:010
321.187	201 KAR 016:612		201 KAR 018:030
321.190	201 KAR 016:510	322.040-050	201 KAR 018:115
	201 KAR 016:590	322.045	201 KAR 018:010
	201 KAR 016:612		201 KAR 018:030
321.193	201 KAR 016:510	322.120	201 KAR 018:010
	201 KAR 016:520		201 KAR 018:030
	201 KAR 016:530	322.160	201 KAR 018:115
321.201	201 KAR 016:510	322.180	201 KAR 018:115
321.203	201 KAR 016:515		201 KAR 018:192
	201 KAR 016:517		201 KAR 018:196
	201 KAR 016:612	322.190	201 KAR 018:192
	201 KAR 016:737		201 KAR 018:196
	201 KAR 016:762	322.220	201 KAR 018:115
	201 KAR 016:765	322.290	201 KAR 018:192
	201 KAR 016:767		201 KAR 018:196
	201 KAR 016:772	333.020	902 KAR 002:020
	201 KAR 016:775	333.090	907 KAR 001:028
	201 KAR 016:777	333.130	902 KAR 002:020
321.205	201 KAR 016:517	335.540	201 KAR 036:050
	201 KAR 016:612	335.545	201 KAR 036:050
	201 KAR 016:737	335B.010	900 KAR 001:009
	201 KAR 016:765	335B.020	900 KAR 001:009
	201 KAR 016:767	336.242	787 KAR 001:370
	201 KAR 016:772	336.248	787 KAR 001:010
	201 KAR 016:775		787 KAR 001:370
	201 KAR 016:777	337	780 KAR 003:072
321.207	201 KAR 016:562	337.275	922 KAR 002:160
	201 KAR 016:612	338.111	803 KAR 002:110
321.208	201 KAR 016:612	339.230	815 KAR 035:060
321.211	201 KAR 016:510	341.070	787 KAR 001:010
	201 KAR 016:590	341.115	787 KAR 001:370
	201 KAR 016:612	341.190	787 KAR 001:010
321.221	201 KAR 016:510	341.243	787 KAR 001:010
	201 KAR 016:590	341.250	787 KAR 001:010
	201 KAR 016:612	341.262	787 KAR 001:010
321.235	201 KAR 016:510	341.413	787 KAR 001:360
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	201 KAR 016:515	350.020	405 KAR 010:015
	201 KAR 016:517	350.060	405 KAR 010:015
	201 KAR 016:562	350.062	405 KAR 010:015
	201 KAR 016:590	350.064	405 KAR 010:015
	201 KAR 016:612	350.093	405 KAR 010:015
	201 KAR 016:730	350.095	405 KAR 010:015
	201 KAR 016:731	350.100	405 KAR 010:015
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350.465	405 KAR 010:015	23 C.F.R.	603 KAR 005:050
350.503	405 KAR 010:015		603 KAR 005:066
403.160	921 KAR 001:400	26 C.F.R.	900 KAR 001:090
403.190	102 KAR 001:320	29 C.F.R.	202 KAR 007:596
	102 KAR 001:380		780 KAR 003:072
403.210 - 403.240	921 KAR 001:400		815 KAR 035:060
403.352	922 KAR 001:470		902 KAR 010:123
403.707	502 KAR 012:010	30 C.F.R.	405 KAR 010:001
405.430	921 KAR 001:400	30 C.F.R.	405 KAR 010:015
405.440	921 KAR 001:400	34 C.F.R.	016 KAR 009:080
405.450	921 KAR 001:400		016 KAR 009:100
405.991	921 KAR 001:400		902 KAR 030:200
406.021	921 KAR 001:400		922 KAR 002:160
406.025	921 KAR 001:400	40 C.F.R.	405 KAR 010:001
421.570	502 KAR 012:010	41 C.F.R.	105 KAR 001:140
424.170	702 KAR 004:090	42 C.F.R.	105 KAR 001:140
439.310 - 439.440	501 KAR 001:080		201 KAR 002:210
439.3401	910 KAR 001:210		806 KAR 017:570
446.010	500 KAR 001:021		907 KAR 001:082
446.400	202 KAR 007:401		907 KAR 010:015
454.220	921 KAR 001:400		922 KAR 001:350
510.010 - 510.040	502 KAR 012:010	45 C.F.R.	105 KAR 001:140
524.140	502 KAR 012:010		502 KAR 012:010
527.070	922 KAR 002:120		806 KAR 009:360
527.100	922 KAR 001:350		806 KAR 017:570
527.110	922 KAR 001:350		902 KAR 028:010
529.010	502 KAR 012:010		910 KAR 001:210
529.100	502 KAR 012:010		921 KAR 001:400
530.020	502 KAR 012:010		922 KAR 001:060
530.064	502 KAR 012:010		922 KAR 001:350
531.310	502 KAR 012:010		922 KAR 001:490
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532.400	501 KAR 001:080		922 KAR 002:120
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	922 KAR 001:470		600 KAR 004:010
	922 KAR 001:490		922 KAR 002:120
	922 KAR 002:160	74 F.R. 18808	806 KAR 017:570
600.030	502 KAR 012:010	7 U.S.C.	921 KAR 003:030
605.090	922 KAR 001:350		922 KAR 002:160
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610.110	922 KAR 001:350	10 U.S.C.	017 KAR 004:030
605.120	922 KAR 001:490		202 KAR 007:201
	922 KAR 002:160		202 KAR 007:301
605.130	922 KAR 001:490		202 KAR 007:330
620.020	201 KAR 020:215	15 U.S.C.	200 KAR 014:011
	922 KAR 002:090		600 KAR 004:010
620.030	922 KAR 001:350		902 KAR 010:120
	922 KAR 002:090		902 KAR 010:123
	922 KAR 002:120	20 U.S.C.	704 KAR 003:365
620.020	922 KAR 002:160		808 KAR 003:050
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620.050 - 620.120	922 KAR 001:470		102 KAR 001:380
620.051	922 KAR 001:470		105 KAR 001:140
620.140	922 KAR 001:350		200 KAR 014:011
620.360	922 KAR 001:350		200 KAR 015:200
620.363	922 KAR 001:350		900 KAR 001:009
625	922 KAR 001:050	29 U.S.C.	201 KAR 015:110
	922 KAR 001:060		780 KAR 003:072
	922 KAR 001:490		806 KAR 017:570
655.601-603	603 KAR 005:050		922 KAR 002:160
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7 C.F.R.	405 KAR 010:001		405 KAR 010:015
	921 KAR 003:030	34 U.S.C.	502 KAR 012:010
	922 KAR 002:160		922 KAR 002:160
12 C.F.R.	808 KAR 003:050	38 U.S.C.	907 KAR 020:035
16 C.F.R.	201 KAR 015:110		922 KAR 002:160
	603 KAR 005:350	42 U.S.C.	806 KAR 017:570
	922 KAR 001:350		907 KAR 001:028
	922 KAR 002:120		907 KAR 010:015
17 C.F.R.	200 KAR 014:011		910 KAR 001:210
20 C.F.R.	922 KAR 002:160		921 KAR 001:400

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			922 KAR 001:470
			922 KAR 001:490
			922 KAR 002:090
			922 KAR 002:160
			922 KAR 005:120
49 U.S.C.			502 KAR 010:120
			600 KAR 004:010
52 U.S.C.			921 KAR 003:030
EO 2016-270			201 KAR 027:006
Ky. Acts 2022 Ch. 199			787 KAR 001:360
Ky. Const. 172, 174			103 KAR 005:200
Pub. L. 108-173			806 KAR 017:570
Pub. L. 111-5			200 KAR 015:010
Pub. L. 114-10			806 KAR 017:570
Pub. L. 114-94			600 KAR 004:010
Pub. L. 116-127			806 KAR 017:570
Pub. L. 117-328			806 KAR 017:570

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
011 KAR 017:050	10-01-2024	Remain in Effect without Amendment
011 KAR 017:070	10-01-2024	Remain in Effect without Amendment
011 KAR 017:080	10-01-2024	Remain in Effect without Amendment
011 KAR 017:090	10-01-2024	Remain in Effect without Amendment
011 KAR 017:100	10-01-2024	Remain in Effect without Amendment
016 KAR 002:020	10-02-2024	Remain in Effect without Amendment
016 KAR 002:090	06-25-2024	Remain in Effect without Amendment
016 KAR 008:040	10-02-2024	Remain in Effect without Amendment
031 KAR 006:020	10-04-2024	To be amended; filing deadline 4-4-2026
040 KAR 002:145	07-23-2024	Remain in Effect without Amendment
106 KAR 002:040	11-22-2024	Remain in Effect without Amendment
11 KAR 017:010	10-01-2024	Remain in Effect without Amendment
12 KAR 017:040	10-01-2024	Remain in Effect without Amendment
12 KAR 017:060	10-01-2024	Remain in Effect without Amendment
12 KAR 017:110	10-01-2024	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
501 KAR 001:030	08-30-2024	To be amended, filing deadline 02-28-2026
501 KAR 006:230	10-29-2024	To be amended, filing deadline 04-29-2026
704 KAR 003:540	08-08-2024	Remain in Effect without Amendment
803 KAR 001:100	11-21-2024	Remain in Effect without Amendment
804 KAR 003:100	05-13-2024	Remain in Effect without Amendment
804 KAR 004:230	09-25-2024	Remain in Effect without Amendment
804 KAR 004:390	10-30-2024	Remain in Effect without Amendment
804 KAR 004:400	10-30-2024	To be amended, filing deadline 04-30-2026
804 KAR 004:410	10-30-2024	To be amended, filing deadline 04-30-2026
804 KAR 005:070	10-30-2024	Remain in Effect without Amendment
804 KAR 006:020	10-30-2024	Remain in Effect without Amendment
804 KAR 010:010	09-25-2024	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
902 KAR 100:180	10-09-2024	Remain in Effect without Amendment
907 KAR 001:045	10-21-2024	Remain in Effect without Amendment
907 KAR 001:047	10-21-2024	Remain in Effect without Amendment
907 KAR 001:102	10-21-2024	Remain in Effect without Amendment
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
911 KAR 003:020	10-08-2024	Remain in Effect without Amendment

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 008:040	7-1-2024
806 KAR 039:030	11-12-2024	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	921 KAR 1:400	8-1-2024
809 KAR 010:001	7-1-2024	921 KAR 1:410	8-1-2024
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		
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810 KAR 003:040	7-1-2024		
810 KAR 003:050	7-1-2024		
810 KAR 004:001	7-1-2024		
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810 KAR 004:060	7-1-2024		
810 KAR 004:070	7-1-2024		
810 KAR 004:080	7-1-2024		
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810 KAR 005:080	7-1-2024		
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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		
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