



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, June 15, 2020.

NOTE: Due to a formatting error, the July 2020 edition of the *Administrative Register of Kentucky* was missing underlining throughout the Register. This publication is intended to replace the prior version in its entirety.

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on July 8, 2020, at 1:00 p.m. in room 171 Capitol Annex. ARRS Tentative Agenda - 1 [Online agenda updated as needed](#)

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Title		Chapter	Regulation
806	KAR	50:	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 deferred by promulgating agencies. Deferrals may be made any time prior to or during the meeting.



Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Monday, July 13, 2020 at 10 a.m.
Annex Room 171



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

BOARDS AND COMMISSIONS

Board of Pharmacy

[201 KAR 002:050](#). Licenses and Permits; Fees. (Deferred from June)

Board of Nursing

[201 KAR 020:225E](#). Reinstatement of license. ("E" expires 12-26-2020)

[201 KAR 020:470E](#). Dialysis technician credentialing requirements and training program standards. ("E" expires 12-26-2020)

Board of Social Work

[201 KAR 023:070](#). Qualifying education and clinical practice under supervision. (Deferred from June)

Board of Licensure of Marriage and Family Therapists

[201 KAR 032:110 & E](#). Telehealth. ("E" expires 12-25-2020)

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Industrial Hemp

[302 KAR 050:012](#). Repeal of 302 KAR 050:040 and 302 KAR 050:050. (Not Amended After Comments)

[302 KAR 050:020](#). Policies and procedures for hemp growers. (Not Amended After Comments)

[302 KAR 050:030](#). Policies and procedures for hemp processors and handlers. (Not Amended After Comments)

[302 KAR 050:055](#). Sampling and THC testing, post-testing actions, disposal of noncompliant harvests. (Not Amended After Comments)

[302 KAR 050:060](#). Fees for the Hemp Licensing Program and forms. (Not Amended After Comments)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice

Child Welfare

[505 KAR 001:120](#). Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Board of Education

Department of Education

Food Service Programs

[702 KAR 006:040](#). Personnel; policies and procedures.

[702 KAR 006:046](#). Repeal of 702 KAR 006:045.

Department of Technical Education

General Administration

[780 KAR 001:011](#). Repeal of 780 KAR 001:010.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

Occupational Safety and Health

[803 KAR 002:301](#). Adoption and extension of established federal standards.

[803 KAR 002:304](#). Exit routes and emergency planning.

[803 KAR 002:311](#). Fire protection.

[803 KAR 002:312](#). Compressed gas and compressed air equipment.

[803 KAR 002:315](#). Hand and portable powered tools and other hand-held equipment.

[803 KAR 002:316](#). Welding, cutting, and brazing.

[803 KAR 002:319](#). Commercial diving operations.

Department of Workers' Claims

[803 KAR 025:010](#). Procedure for adjustments of claims. (Comments Received; SOC due 06-15-2020)

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**Kentucky Horse Racing Commission
General**

[810 KAR 002:090 & E](#). Temporary unsuitability of licensed premises. ("E" expires 12-13-2020)

Medication Guidelines

[810 KAR 008:010](#). Medication; testing procedures; prohibited practices. (Not Amended After Comments) (Deferred from June)

[810 KAR 008:020](#). Drug, medication, and substance classification schedule and withdrawal guidelines.

[810 KAR 008:030](#). Disciplinary measures and penalties. (Deferred from June)

[810 KAR 008:070](#). Bisphosphonates. (Deferred from May)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

Payment and Services

[907 KAR 3:300 & E](#). Enhanced and suspended Medicaid services and requirements if there is a declared national or state emergency. ("E" expires 12-12-2020)

Department for Community Based Services

Division of Family Support

Supplemental Nutrition Assistance Program

[921 KAR 003:025 & E](#). Technical requirements. ("E" expires 01-10-2021)

3. COMMITTEE REVIEW OF EFFECTIVE REGULATIONS

CABINET FOR HEALTH AND FAMILY SERVICES

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Division of Child Care

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[922 KAR 002:400E](#). Enhanced requirements for certified and licensed child care as result of a declared state of emergency. ("E" expires 03-05-2021)

4. REGULATIONS **REMOVED FROM JULY'S AGENDA**

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[201 KAR 030:130](#). Education provider, instructor, and course. (Deferred from August 2019)

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Board of Education

Department of Education

Charter Schools

[701 KAR 008:020](#). Evaluation of charter school authorizers. (Withdrawn by agency)

Department for Libraries and Archives

Division of Library Services

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[725 KAR 002:060](#). Certification of public librarians. (Comments Received; SOC ext., due 07-15-2020)

[725 KAR 002:070](#). Certification renewal of public librarians. (Comments Received; SOC ext., due 07-15-2020)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Certificate of Need

State Health Plan

[900 KAR 005:020](#). State Health Plan for facilities and services. (Comments Received, SOC due 7-15-2020)

Department for Public Health

Division of Maternal and Child Health

Kentucky Early Intervention System

[902 KAR 030:010E](#). Enhanced early intervention services in response to declared national or state public health emergency. ("E" expires 12-16-2020) (Comments Received, SOC due 7-15-2020)

Department for Medicaid Services

Division of Policy and Operations

Medicaid Services

[907 KAR 1:604 & E](#). Recipient cost-sharing. ("E" expires 01-07-2021) (Comments Received; SOC ext., due 07-15-2020)

VOLUME 47, NUMBER 1– JULY 1, 2020

ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed BEFORE noon, July 15, 2019
(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on proposed administrative regulations, which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, mailing address, e-mail address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by letter, whether the hearing was held or cancelled and whether 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 month of publication.

A transcript of the hearing is not required unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.

ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed AFTER noon, July 15, 2019
(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.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on a proposed administrative regulation, which shall be held between the 21st and the last workday of the month following the month of publication. Written comments shall also be accepted until the end of the calendar month in which the public hearing was scheduled.

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 are at least two months long. For other regulations with open comment periods, please also see last month's Administrative Register of Kentucky.

The administrative body shall notify the Compiler, by letter, 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 administrative 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 administrative regulation is deferred or found deficient, the administrative regulation shall be considered in effect upon adjournment of the appropriate jurisdictional committee meets or 90 days after being referred by LRC, whichever occurs first.

REPRINT

This administrative regulation was originally printed on the April 2020 Edition of the *Administrative Register of Kentucky*; however, the body of the regulation did not reflect the changes made in the Amended After Comments version. 920 KAR 1:070, Amended After Comments, is being reprinted here in its entirety.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Human Resource Management
Division of Employee Management
(Amended After Comments)

920 KAR 1:070. Services for individuals who are deaf, hard of hearing, or speech impaired~~[Deaf and hard of hearing services].~~

RELATES TO: KRS 2.110, 163.500, 163.506, 194A.005(1), 194A.030~~(9)~~~~(10)~~ 194A.060, 278.548, 309.300-309.319, 344.500(1), 28 C.F.R. ~~35.104~~, 35.160, 29 U.S.C. 794, 42 U.S.C. 12131-12213, 45 C.F.R. 160, 162, 164~~;~~ ~~Pub.L. 104-191, 110-325,~~ ~~[EO-2009-544]~~

STATUTORY AUTHORITY: KRS 12.290, 194A.050(1)

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 proper administration of the cabinet and its programs. In accordance with federal mandates in 28 C.F.R. 35.160, 29 U.S.C. 794, ~~and~~ 42 U.S.C. 12131-12213, ~~[as amended by Pub.L. 110-325,~~ and KRS 12.290~~;~~ and 344.500(1), the Cabinet for Health and Family Services has a responsibility to provide accessibility to program services delivered directly by the cabinet or indirectly through a contractual or other arrangement to an individual who is deaf or hard of hearing. This administrative regulation establishes cabinet procedures for the provision of interpreting services to a client who is deaf or hard of hearing.

Section 1. Definitions. (1) "Assignment" means interpreting for a client as approved by a cabinet program.

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Cabinet program" means a program of service, financial aid, or other benefit administered by the cabinet and provided:

(a) Directly by the cabinet; or

(b) Indirectly by the cabinet through a contractual or other arrangement.

(4) "Client" means a person who:

(a) Applies in writing, electronically, verbally, or through a designated representative for participation in a cabinet program; or

(b) Receives a service, financial aid, or other benefit from a cabinet program.

(5) **"Companion" means a family member, friend, or associate of an individual seeking access to a service, program, or activity of the cabinet, who, along with that individual, is an appropriate person with whom the cabinet communicates.**

(6) "Deaf" and "hard of hearing" are defined by KRS 163.500.

~~(7)~~~~(6)~~ "Emergency" means a situation of an urgent nature in which a client determines that a delay of the event for more than twenty-four (24) hours is likely to result in loss of service, financial aid, or other benefit in a cabinet program.

(8) "Individual with a communication disability" means a person who is deaf, hard of hearing, or speech impaired.

~~(9)~~~~(7)~~ "Interpreter" is defined by KRS 309.300(4).

~~(10)~~~~(8)~~ "Interpreting" is defined by KRS 309.300(5).

~~(11)~~~~(9)~~ "Kentucky Board of Interpreters for the Deaf and Hard of Hearing" means:

(a) "Board" ~~as~~ defined by KRS 309.300(1); and

(b) The board established by KRS 309.302.

~~(12)~~~~(10)~~ "Kentucky Commission on the Deaf and Hard of Hearing" or "KCDHH" means the commission established by KRS 163.506.

~~(13)~~~~(14)~~ "Office of Human Resource Management" or "OHRM" means the major organizational unit of the cabinet established by KRS 194A.030~~(9)~~~~(10)~~ and EO-2009-544].

~~(14)~~~~(12)~~ "Ongoing interpreting services" means interpreting services required to meet the needs of a client in a cabinet program in accordance with the client's plan of care, case plan, or program eligibility.

(15) "Qualified interpreter" means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is:

(a) Able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary; and

(b) A sign language interpreter, oral transliterator, or cued-language transliterator.

~~(16)~~~~(13)~~ "Time-limited interpreting services" means interpreting services ~~that~~~~which~~ are provided to a client at a specific time and location in order to access a cabinet program.

Section 2. Provision of Interpreting Services. (1) A cabinet program shall:

(a) Make available **qualified** interpreting services to a client who is deaf,~~or~~ hard of hearing, **or speech impaired; and**

(b) Take appropriate steps to ensure that communication with an applicant, participant, member of the public, or companion with a disability is as effective as communication with others.

(2) Interpreting services provided by a cabinet program shall be at no charge to a client.

(3) Interpreting provided by a cabinet program shall be in accordance with KRS 309.301.

(4) On behalf of a client who is deaf,~~or~~ hard of hearing, **or speech impaired** and does not waive interpreting services in accordance with Section 4(2) of this administrative regulation, a cabinet program shall:

(a) Access **a qualified**~~an~~ interpreter licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; or

(b) Request interpreting services:

1. In accordance with 735 KAR 2:050; and

2. Through the Interpreter Referral Service Program established by KCDHH in 735 KAR Chapter 2.

(5) A cabinet program may utilize an employee for interpreting as an alternative to the requirement of subsection (4) of this section if:

(a) The cabinet program employs an individual who is licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; ~~and~~

(b) **The employee is a qualified interpreter; and**

(c) No actual or perceived conflict exists between the employee's job duties and the provision of interpreting services for ~~the~~~~a~~ client, as approved by the employee's supervisor.

(6) A cabinet program or a client may access the Kentucky Telephone or Video Relay Service Program established in accordance with KRS 278.548.

Section 3. Interpreter Selection. (1) In the selection of an interpreter, a cabinet program shall give consideration to:

(a) An interpreter's:

1. Licensure;

2. Certification;

3. Years of experience; and

4. Exposure to the cabinet program or familiarity with the jargon of the cabinet program;

(b) Prior use of the interpreter by the cabinet program for the

same client;

- (c) Any preference of the client; and
- (d) The estimated cost for the interpreting services.

(2) An interpreter who provides interpreting services to a cabinet program shall:

- (a) Comply with:
 1. 735 KAR 2:040 if the interpreter is retained through KCDHH Interpreter Referral Services Program; and

2. Licensure requirements of the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; and

- (b) Agree to confidentiality in the provision of interpreting services in accordance with KRS 194A.060, and 45 C.F.R. 160, 162, and 164[, and Pub.L. 104-194].

Section 4. Client Rights. (1) A cabinet program shall inform a client who is deaf, ~~or~~ hard of hearing, or speech impaired of the client's right to effective communication through the provision of the CHFS-OHRM-EEO-2, Your Right to Equally Effective Communication.

(2)(a) A client who is deaf, ~~or~~ [øf] hard of hearing, or speech impaired shall have the right to waive interpreting services provided by a cabinet program.

(b) To waive interpreting services:

1. A client shall complete and sign the CHFS-OHRM-EEO-3, Waiver of Free Interpreting Services; and
2. The cabinet program shall provide a copy of the signed CHFS-OHRM-EEO-3 to the client.

(c) A client may rescind the CHFS-OHRM-EEO-3 at any time.

(d) A client may rely on an accompanying adult companion who uses sign language to interpret or facilitate communication if:

- 1. The client makes the request;**
- 2. The accompanying adult companion agrees;**
- 3. Reliance on the accompanying adult companion is appropriate under the circumstances; and**
- 4. The accompanying adult companion's impartiality or effectiveness is not in doubt.**

(3) If a client refuses a specific interpreter, a cabinet program shall attempt to find a replacement but shall not guarantee a replacement.

Section 5. Payment for Interpreting Services. (1)(a) Unless an emergency exists, a cabinet program shall approve payment for interpreting services, whether time-limited or ongoing interpreting services, with an interpreter prior to the provision of interpreting services to a client.

(b) The total payment approved shall:

1. Be documented in writing;
2. Be copied or shared with the interpreter and the cabinet program;
3. Include identifying information about the cabinet program and the assignment; and
4. Include a breakdown of the interpreter's:
 - a. Hourly rate in accordance with subsection (3) of this section;
 - b. Projected number of hours for the assignment in accordance with subsection (4) of this section;
 - c. Projected mileage;
 - d. Meal required during the assignment; and
 - e. Overnight lodging requested for the assignment in accordance with paragraph (c) of this subsection.

(c) An overnight lodging request for interpreting services shall include:

1. A justification for the overnight lodging;
2. The estimated length of the lodging;
3. A preferred lodging establishment; and
4. Projected lodging costs.

(2) Mileage and meal reimbursement shall be in accordance with 200 KAR 2:006.

(3)(a) A cabinet program shall pay an interpreter an hourly rate:

1. For interpreting services provided Monday through Friday between the hours of 8 a.m. and 5 p.m.; and

2. Consistent with the prevailing rate for the service area.

(b) In addition to the hourly rate established in paragraph (a) of this subsection, a cabinet program shall pay an enhanced hourly rate consistent with the prevailing enhanced rate for the service area if the interpreter's assignment falls:

1. Between 5 p.m. and 8 a.m. Monday through Friday;
2. Between 5 p.m. Friday and 8 a.m. Monday; or
3. On a state holiday established in accordance with KRS 2.110.

(c) The cabinet shall consult annually with KCDHH regarding accessibility and the provision of accommodations.

(4)(a) With the exception of mileage, a meal, and lodging, the hourly rate established in accordance with subsection (3) of this section[,] shall include:

1. Time on the assignment; and
2. Reasonable time traveling for the assignment.

(b) A cabinet program shall determine an interpreter's time traveling as reasonable based on:

1. Mileage; and
2. Road and driving conditions on the date of the interpreter's assignment.

(5) If an interpreter's assignment in a cabinet program is less than two (2) hours, the cabinet program shall pay:

- (a) Two (2) hours for the assignment; or
- (b) Less than two (2) hours in accordance with the invoice submitted for the assignment.

(6)(a) A cabinet program shall pay an interpreter for the assignment in accordance with the payment approved pursuant to subsection (1) of this section if:

1. A client does not appear for an appointment or cancels an appointment with less than twenty-four (24) hours' notice; or
2. The cabinet fails to notify the interpreter of the cancellation twenty-four (24) hours or more in advance of the appointment.

(b) The cabinet shall re-schedule an appointment if:

1. A request to re-schedule is received two (2) business days in advance of the appointment; or
- 2.a. The cabinet determines that staff of the cabinet program, the interpreter, or the client is not at fault for failure to keep the appointment; and
- b. The client requests re-scheduling of the appointment.

(7)(a) An interpreter shall:

1. Document actual costs of interpreting services to a cabinet program; and
2. Submit an invoice to the cabinet program for verification and payment.

(b) For each assignment, an interpreter's invoice shall contain the following:

1. The purpose of the assignment, including the client's name or an identifier for the client's case;
2. For each date of the assignment, the:
 - a. Hours of the day during which the interpreting services were provided;
 - b. Total number of hours of the interpreting services;
 - c. Hourly rate for the interpreting services;
 - d. Mileage for the assignment; and
 - e. Rate per mile in accordance with subsection (2) of this section;

3. The total cost for any lodging;
4. A grand total for all costs;
5. Contact information for an employee with the cabinet program to verify:
 - a. The provision of interpreting services; and
 - b. Costs approved in accordance with subsection (1) of this section;

6. The interpreter's:

- a. Name;
- b. Social Security number or federal identification number;
- c. Contact number;
- d. E-mail address, if one is available; and
- e. Mailing address;
7. The date of the invoice; and
8. A number for the invoice.

(c) If an interpreter submits an invoice to a cabinet program that includes lodging, the interpreter shall attach the original

receipt from the lodging establishment.

(8)(a) Payment for interpreting services shall be available to an interpreter who is not:

1. A volunteer; or
2. An employee of a cabinet program.

(b) An employee of a cabinet program, who is utilized in accordance with Section 2(5) of this administrative regulation, shall not receive payment for interpreting services in addition to the employee's:

1. Pay and employee benefits from the cabinet program; and
2. Reimbursement for travel in accordance with 200 KAR 2:006.

Section 6. Complaints. If an individual is aggrieved by a cabinet program's provision of, or failure to provide, interpreting services in accordance with this administrative regulation, the individual may submit a:

(1) Grievance to the KCDHH in accordance with 735 KAR 2:060; or

(2) Client Civil Rights complaint, if discriminatory action by a cabinet program is alleged, to the:

(a) Office of Human Resource Management in accordance with 920 KAR 1:090;

(b) U.S. Department of Health and Human Services' Office for Civil Rights;

(c) U.S. Department of Agriculture's Office of ~~the~~ Assistant Secretary for Civil Rights ~~for Food and Nutrition Service Southeast Regional Office~~;

(d) U.S. Department of Education's Office for ~~of~~ Civil Rights;

(e) U.S. Department of Labor's Civil Rights Center;

(f) U.S. Department of Justice's Civil Rights Division;

(g) Kentucky Commission on Human Rights; or

(h) Another federal, state, or local agency with jurisdiction over the cabinet program involved in the alleged discrimination.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CHFS-OHRM-EEO-2, Your Right to Equally Effective Communication", ~~March~~~~edition~~ 2020~~[2010]~~; and

(b) "CHFS-OHRM-EEO-3, Waiver of Free Interpreting Services", ~~edition~~ 2020~~[2010]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Human Resource Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TRESA STRAW, Executive Director

ERIC C. FRIEDLANDER, Acting Secretary

APPROVED BY AGENCY: March 9, 2020

FILED WITH LRC: March 11, 2020 at 11 a.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: H. Jay Klein or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Cabinet for Health and Family Services procedures for the provision of interpreting services to a client who is deaf, hard of hearing, or speech impaired.

(b) The necessity of this administrative regulation: Federal law, including 28 C.F.R. 35.104 and 35.160, and state law, including KRS 344.500, require the provision of interpreting services to a client who is deaf, hard of hearing, or speech impaired.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides detailed procedures for the provision of those services and includes clients' rights, details as to payment for interpreting services, complaint options, and specific forms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the specifics as to definitions, the provision of interpreting services, interpreter selection, client rights, payment for interpreting services, complaints, and forms.

(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 makes a technical correction to a state statute citation and revises the two forms incorporated by reference. The Amended After Comments changes further align the administrative regulation with federal and state law by defining "companion", "individual with a communication disability", and "qualified interpreter"; establishing provisions that reflect the requirements of 28 C.F.R. 35.160(a)(1), which is the primary consideration rule; requiring that interpreter services be provided by a qualified interpreter to align with 28 C.F.R. 35.104; and specifying when a client may use an accompanying adult companion for interpreting services. Changes were made throughout the administrative regulation to include individuals who are speech-impaired in order to comply with KRS 344.500. Additional changes were made to comply with the drafting requirements of KRS 13A.222 and correct an agency name. Lastly, Form CHFS-OHRM-EEO-2 has been amended to align with the changes made in the administrative regulation and to provide the contact information for the entities listed in Section 6.

(b) The necessity of the amendment to this administrative regulation: The United States Department of Agriculture, Office of Civil Rights through an audit has identified the necessity of revising the two forms incorporated by reference. The Amended After Comments changes were necessary to align with federal and state law and to appropriately respond to some of the comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The revised forms will better inform a client of the right to equally effective communication and provide a better understanding when choosing to waive free interpreting services. The Amended After Comments changes align to the provisions of 28 C.F.R. 35.104 and 35.160, and KRS 344.500.

(d) How the amendment will assist in the effective administration of the statutes: The revised forms will have more details and include the United States Department of Agriculture nondiscrimination statement. The Amended After Comments changes align to the provisions of 28 C.F.R. 35.104 and 35.160, and KRS 344.500.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet for Health and Family Services and its clients. It is not known how many individuals will request interpreter services from the cabinet.

(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 Cabinet for Health and Family Services will need to replace the outdated forms with the revised forms in each of its departments and offices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost, for the various cabinet entities will be printing the revised forms as needed instead of the old forms.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cabinet will be in compliance with the United States Department of Agriculture, Office of Civil Rights 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: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 28 CFR 35.104, 35.160, 29 USC 794, 42 USC 12131 – 12213, KRS 12.290, and KRS 344.500(1).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Not applicable.

(d) How much will it cost to administer this program for subsequent years? Not applicable.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 28 CFR 35.104, 35.160, 29 USC 794, and 42 USC 12131 – 12213.

2. State compliance standards. KRS 12.290 and KRS 344.500(1).

3. Minimum or uniform standards contained in the federal mandate. The requirement to provide accessibility to program services to an individual who is deaf or hard of hearing.

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.

EMERGENCY ADMINISTRATIVE REGULATIONS

Emergency regulations filed after 7/15/2019 are automatically set to expire 270 days from the date filed. The 270 days may be extended by one month, if comments were received. Emergency regulations expire upon the conclusion of the 270 days (or 270 days plus the number of days of the requested extension) or upon replacement by an ordinary regulation, whichever occurs first.

STATEMENT OF EMERGENCY
9 KAR 1:040E

This emergency administrative regulation is one that must be placed into effect immediately in order to meet the requirements of SB 157 (2020), which governs the procedures for administrative hearings. The amendment to the administrative regulation involves the procedures for filing of lobbyist forms required by KRS 11A.211 and includes changes to the lobbyist forms required by SB157. SB 157 will become effective on July 1, 2020. An ordinary administrative regulation is not sufficient because it will not be in effect by the time the new amendments to KRS 11A.211 become effective on July 1, 2020. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDREW BESHEAR, Governor
CHRISTOPHER L. THACKER, Chair

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(Emergency Amendment)

9 KAR 1:040E. Executive agency lobbyist, employer of executive agency lobbyist, and real party in interest registration and expenditure statements; financial transactions and termination forms; and enforcement.

RELATES TO: KRS 11A.201, 11A.211, 11A.216, 11A.221, 11A.231, 11A.233(1), 11A.236, 11A.241(4), (5), (6), 11A.990

STATUTORY AUTHORITY: KRS 11A.110(3), (4), 11A.241(4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) requires the Executive Branch Ethics Commission to promulgate administrative regulations to implement and prescribe forms for statements required by KRS Chapter 11A. KRS 11A.241(4) and (5) require the Executive Branch Ethics Commission to prescribe the initial registration statement, the updated registration statement, and the termination notice required by KRS 11A.211, the statement of expenditures required by KRS 11A.216, and the statement of financial transactions required by KRS 11A.221. This administrative regulation establishes the initial registration, financial transactions statements, expenditure statements, termination notice, and enforcement procedure.

Section 1. Definitions. (1) "Agent" means the "executive agency lobbyist" as defined by KRS 11A.201(8).

(2) "Commission" means the Executive Branch Ethics Commission.

(3) "Employer" is defined by KRS 11A.201(3).

(4) "Executive agency decision" is defined by KRS 11A.201(7).

(5) "Executive agency lobbyist" is defined by KRS 11A.201(8).

(6) "Filer" means the executive agency lobbyist, employer of the executive agency lobbyist, or real party in interest.

(7) "Real party in interest" is defined by KRS 11A.201(15).

Section 2. Initial Registration Statement. (1) ~~The[Until June 30, 2019, the initial registration statement required by KRS 11A.211(1) shall be filed on the Initial Registration Statement (Rev. 4/2016). After June 30, 2019, the]~~ initial registration statement required by KRS 11A.211(1) shall be filed on the Initial Registration Statement EBEC-EAL-201.

(2)(a) The brief description of the executive agency decision shall include the subject matter for which an executive agency lobbyist:

1. Has been engaged; or
2. Is responsible.
- (b) Subject matters shall include:
 1. An award of grant for social services;
 2. A lease for office space or equipment;
 3. A contract to provide food, clothing, or other consumable products;
 4. Any decisions made concerning the matters listed in KRS 11A.201(7)(a) through (f); and
 5. Any other subject matter.

Section 3. (1)~~[(a) Until July 31, 2019, if a filer submitted the initial registration statement form to the commission prior to June 30, 2019, then the updated registration statement form required by KRS 11A.211(2) shall be filed on the applicable Updated Registration Statement (Rev. 4/2016) for that filer.~~

~~(b)] If a filer submitted the initial registration statement form to the commission, then during the proceeding July 1 through July 30 following the initial registration and each year thereafter, [after June 30, 2019, then] the updated registration form required by KRS 11A.211(2) shall be filed on the applicable Updated Registration Statement as follows:~~

- ~~(a)[1-] For the executive agency lobbyist on:
 1. [a.] The combined form EBEC-EAL-202; or
 2. [b.] EBEC-EAL-203;~~
- ~~(b)[2-] For the employer of the executive agency lobbyist on form EBEC-EAL-204; and~~
- ~~(c)[3-] For the real party in interest on form EBEC-EAL-205.~~

~~(2) The[Until June 30, 2019, the notice of termination required by KRS 11A.211(4) shall be filed on the Termination Notification as Executive Agency Lobbyist (Rev. 4/2016). After June 30, 2019, the] notice of termination required by KRS 11A.211(4) shall be filed on the Termination Notification as Executive Agency Lobbyist EBEC-EAL-206.~~

Section 4. Enforcement Procedure. (1) If an executive agency lobbyist, an employer of an executive agency lobbyist, or a real party in interest has not filed an Updated Registration Statement on or before the date the statement is due, the commission shall notify the party, by certified mail, return receipt requested, that if the statement is not filed within fifteen (15) days of the date of the receipt of notice, the commission shall levy a fine, as provided by KRS 11A.990(5).

(2) If, by the 16th day after proof of service of the certified letter is received by the commission, the commission has not received the statement that was due by July 31, the commission shall prepare and issue to the executive agency lobbyist, employer, or real party in interest an order demanding payment of the appropriate fine as required by KRS 11A.990(5). The executive agency lobbyist, employer, or real party in interest shall pay the fine within ten (10) days from the date of the order. The commission shall exonerate or reduce the fine if the commission receives evidence during the ten (10) day fine payment period indicating the filer has already filed the updated registration statement, or that the delinquency is in error.

(3) The commission also may exonerate or reduce a fine for late filing of the updated registration statement if the commission feels that exoneration is warranted, based on the circumstances, such as illness or injury, bereavement, emergency, unforeseen circumstances beyond the control of the person, bona fide effort to file on time, or similar circumstance.

(4) If the commission is not in receipt of the fine from the executive agency lobbyist, employer, or real party in interest by the tenth day after issuance of the order demanding payment of the fine, the general counsel may recommend that the commission initiate an investigation of the executive agency lobbyist, employer, or real party in interest to determine if the

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failure to file was intentional causing the criminal penalties set forth in KRS 11A.990(6) to apply.

Section 5. Submission. (1) The signature on the statements and forms required by this administrative regulation shall be:

- (a) In blue or black ink; or
- (b) Electronic.

(2) The forms required by this administrative regulation, which are filed with the commission, shall be submitted as follows:

- (a) By hard copy via hand-delivery or U.S. Mail to the Commission's address;
 - (b) Electronically by facsimile to (502) 696-5091;
 - (c) Electronically by electronic mail to ethicsfiler@ky.gov; or
 - (d) Through an online system once established by the commission.
- (3) The forms incorporated by reference in this administrative regulation may be reproduced by the executive agency lobbyist, the employer, or real party in interest.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Initial Registration Statement" - EBEC-EAL-201 (Rev. 05/2020)[,rev. 04/2016];
- (b) "Updated Registration Statement - Executive Agency Lobbyist" - EBEC-EAL-202 (Rev.05/2020)[,rev. 04/2016];
- (c) "Updated Registration Statement - Employer of Executive Agency Lobbyist" - EBEC-EAL-203 (Rev.05/2020)[,rev. 04/2016];
- (d) "Updated Registration Statement -Executive Agency Lobbyist/Employer Combined" - EBEC-EAL-204 (Rev.05/2020)[,rev. 04/2016];
- (e) "Updated Registration Statement - Real Party in Interest" - EBEC-EAL-205 (Rev.05/2020)[,rev. 04/2016];
- (f) "Termination Notification as Executive Agency Lobbyist" - EBEC-EAL-206 (Rev.05/2020)[,rev. 04/2016]; and
- (g) "Commonwealth of Kentucky Registration Card Executive Agency Lobbyist", 9/93[;
- ~~(h) "Initial Registration Statement" - EBEC-EAL-201 (Rev. 05/2019);~~
- ~~(i) "Updated Registration Statement - Executive Agency Lobbyist" EBEC-EAL-202 (Rev. 05/2019);~~
- ~~(j) "Updated Registration Statement -Executive Agency Lobbyist/Employer Combined" EBEC-EAL-203 (Rev. 05/2019);~~
- ~~(k) "Updated Registration Statement - Employer of Executive Agency Lobbyist" EBEC-EAL-204 (Rev. 05/2019);~~
- ~~(l) "Updated Registration Statement - Real Party in Interest" EBEC-EAL-205 (Rev. 05/2019);~~
- ~~(m) "Termination Notification as Executive Agency Lobbyist" EBEC-EAL-206 (Rev. 05/2019); and~~
- ~~(n) "Commonwealth of Kentucky Registration Card Executive Agency Lobbyist" (Rev. 9/93).~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTOPHER L. THACKER, Chair

APPROVED BY AGENCY: May 18, 2020

FILED WITH LRC: June 9, 2020 at 3 p.m.

CONTACT PERSON: Kathryn H. Gabhart, Executive Director, Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, phone (502) 564-7954, fax (502) 695-5939, email Katie.Gabhart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance to Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, and Real Parties in Interest who file an initial registration and updated registration statements with the Executive Branch Ethics Commission as required by KRS 11A.211, KRS 11A.216, KRS 11A.221, and KRS 11A.241(4).

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 11A.241(4), (5), & (6).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides guidance and forms required by KRS 11A.211, KRS 11A.216, KRS 11A.221, and KRS 11A.241(4).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently provides guidance and the forms required for Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, and Real Parties in Interest who file an initial registration and updated registrations with the Executive Branch Ethics Commission as required by KRS 11A.211, KRS 11A.216, KRS 11A.221, and KRS 11A.241(4).

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the administrative regulation by revising the forms required by KRS 11A.211, KRS 11A.216, KRS 11A.221, and KRS 11A.241(4) as required by SB 157 of the 2020 General Assembly Session, as well as necessary changes for ease of use and aesthetic functioning of the forms.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as required by SB 157 of the 2020 General Assembly Session.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation conforms with the requirements of SB 157 of the 2020 General Assembly Session requiring changes to the forms submitted by Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, and Real Parties in Interest.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the administration of KRS 11A.211 as amended by SB 157 of the 2020 General Assembly Session requiring revisions in the forms submitted by Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, and Real Parties in Interest.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, Real Parties in Interest and officials of Executive Branch Agencies.

(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: All Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, Real Parties in Interest and officials of Executive Branch Agencies will be aware of the amendment of KRS 11A.211 by SB 157 of the 2020 General Assembly Session.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to file the required forms.

(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 known cost associated with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, Real Parties in Interest and officials of Executive Branch Agencies will have guidance and notice as to the requirements of KRS 11A.211, KRS 11A.216, KRS 11A.221, and KRS 11A.241(4) and the revised forms required by SB 157 as amending KRS 11A.211.

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

(a) Initially: Minimal costs to the Executive Branch Ethics Commission associated with the publication of training materials and conducting education already provided by the Commission's budget.

(b) On a continuing basis: Minimal costs to the Executive Branch Ethics Commission associated with the ongoing

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publication of training materials and conducting education already provided by the Commission’s budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission’s existing budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This administrative regulation will not require an increase in any fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Executive Branch of state government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 11A.110(3) and 11A.080.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to the administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue? The amendment to the administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? \$500 for publications and training; funds already included in the Executive Branch Ethics Commission’s budget.

(d) How much will it cost to administer this program for subsequent years? \$500 for publication and training; funds already included in the Executive Branch Ethics Commission’s budget.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

STATEMENT OF EMERGENCY
820 KAR 1:050E

Pursuant to KRS 13A.190(1)(a)(1) and KRS 39A.180, this emergency regulation is being promulgated in order to meet an imminent threat to the public health, safety, or welfare. On March 6, 2020, Governor Andy Beshear signed Executive Order declaring a State of Emergency regarding COVID-19. On March 18, Governor Andy Beshear signed Executive Order 2020-243 requiring all citizens of Kentucky to take all feasible measures to engage in appropriate social distancing. On March 18, 2020, Public Protection Cabinet Secretary Kerry B. Harvey signed an Order that suspended all charitable gaming licenses and all charitable gaming activity. On March 25, 2020, Secretary Harvey signed a subsequent order creating an exception for the suspension of all charitable gaming activity to allow charitable organizations to sell raffle tickets and conduct raffle drawings if all tickets are exclusively sold online and there are no gatherings of

people incident to the drawing of a raffle winner during the State of Emergency. This emergency regulation is being filed to allow charitable organizations to conduct raffle drawings using a web-based, publicly accessible random number generator instead of having to print paper tickets and draw the winner from a physical receptacle. An ordinary administrative regulation would not immediately allow organization to use a random number generator to facilitate its raffle drawings while social distancing guidelines remain in effect. This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation will differ from this emergency regulation by including technical specifications for electronic raffle systems and online raffle systems and will require that these systems be tested and certified by an independent testing laboratory.

AMBROSE WILSON IV, Deputy Commissioner
ANDY BESHEAR, Governor

PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Emergency Amendment)

820 KAR 1:050E. Raffles.

EFFECTIVE: May 22, 2020

RELATES TO: KRS 238.545, 238.550

STATUTORY AUTHORITY: KRS 238.515

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and to promulgate administrative regulations necessary to implement KRS Chapter 238. This administrative regulation establishes standards for the conduct of raffles.

Section 1. Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section or duplicate ticket and shall be consecutively numbered. If raffle tickets are sold electronically, the charitable organization selling the tickets shall provide all purchasers with a physical ticket or electronic communication that contains the information required by subsection (2). The organization shall not send detachable sections or duplicate tickets via United States mail.

(2) The detachable section or duplicate of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser’s name, complete address, and telephone number.

(3) The following information shall be on each ticket:

- (a) The date and time for each drawing;
- (b) The location of each drawing;
- (c) The name of the charitable organization conducting the raffle;

(d) The charitable organization’s license number or exemption number;

(e) The price of the ticket; and

(f) Each prize to be awarded with a fair market value over \$500.

(4) The requirements of subsections (2) and (3) of this section shall be waived if:

(a) The raffle tickets sell for five (5) dollars or less, or

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event or a licensed special limited charity fundraising event.

Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

(3) If the prize to be awarded is the jackpot of a progressive raffle board, the charitable organization’s charitable gaming session records shall report in the gross receipts total all startup

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cash, monies derived from raffle ticket sales, and any other contribution to the jackpot.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing. Organizations may broadcast a raffle drawing via a verifiable online live streaming service to provide ticket holders an opportunity to view the drawing if the organization returns a signed notarized affidavit to the Department within thirty (30) days of the raffle drawing certifying that the organization complied with all relevant statutes and regulations.

(2) A person shall not be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections or duplicates of all tickets sold prior to the drawing.

(4) Before drawing, the charitable organization shall place the seller's portion of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

(5) A charitable organization may utilize an electronic random number generator ("RNG") instead of the receptacle required by Subsection (4) of this Section if the charitable organization:

(a) Uses a random number generator hosted by a publicly accessible third-party website that is identified and approved by the department before the drawing;

(b) Ensures that all numbers of purchased tickets are included in the range of numbers from which the RNG will select a winning ticket;

(c) Uses the RNG to select only one winning number per raffle prize to be awarded, unless the number generated by the RNG is associated with a refunded, unsold, or voided ticket, in which case the organization may use the RNG to select another winning ticket number; and

(d) Provides an affidavit on a form to be supplied by the department in which the organization verifies its compliance with all provisions of KRS Chapter 238 and these administrative regulations.

(f) Retains with its session records a screenshot of the RNG that includes the range of numbers into the RNG and the winning number selected by the RNG.

Section 4. Claiming Raffle Prizes. (1) If the winner is not present at the drawing, the charitable organization shall notify the winner within seven (7) days of the drawing that the winner shall claim the prize within thirty (30) days.

(2) If a winner does not wish to claim the prize but wishes to donate it to the charitable organization, the charitable organization shall obtain a written statement of the winner's intention within the thirty (30) day period. A charitable organization shall not accept the donation to the charitable organization of a prize won if doing so would violate KRS 238.540.

(3) If a raffle winner does not claim the prize or donate it to the charitable organization within thirty (30) days after having been contacted by certified mail, or if the raffle winner is ineligible by law to claim the prize, the charitable organization shall notify the department and draw another ticket in the presence of department personnel.

(4) The requirements of subsections (1), (2), and (3) of this section shall be waived, and the charitable organization shall be allowed to draw tickets until a winner is present if:

(a) The raffle tickets sell for five (5) dollars or less;

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charity fundraising event.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

AMBROSE WILSON IV, Deputy Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: May 22, 2020

FILED WITH LRC: May 22, 2020 at 4 p.m.

CONTACT PERSON: Doug Hardin, Staff Attorney, Department of Charitable Gaming, 500 Mero Street 2NW24, Frankfort, Kentucky 40601; phone (502) 782-8204; fax 573-6625; email doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Doug Hardin, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation allows charitable organizations to utilize a random number generator to conduct electronic raffles.

(b) The necessity of this administrative regulation: In light of the COVID-19 pandemic, the Cabinet Secretary has signed two Cabinet orders relating to charitable gaming. One order suspended all charitable gaming activities in the Commonwealth, and a subsequent order created a narrow exception to allow charitable organizations to sell raffle tickets online and conduct their drawings online. This regulatory amendment aids helps organization generate revenue while conforming to these executive orders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Raffles are included in the definition of charitable gaming in KRS 238.505(2). Nothing in this regulation is inconsistent with the definition of raffle in KRS 238.505(7) or the statutory requirements for a raffle found in KRS 238.545(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes standards for the conduct of raffles utilizing a web-based random number generator and establishes procedures to verify the fairness of these raffles.

(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 regulation gives charitable organization an additional method for conducting a raffle draw and therefore no longer requires them to print paper tickets and physically draw a ticket from a receptacle, which aids in drawings being conducted safely.

(b) The necessity of the amendment to this administrative regulation: Charitable organizations that rely on charitable gaming as a source of fundraising have seen a significant reduction in revenue as a result of the COVID-19 pandemic and measures that have been implemented to address it. This regulation, along with the Secretary's order mentioned in response to question (1) above, gives the charitable organization an option to generate revenue during the current state of emergency. This regulation also reduces operating costs by allowing organizations to utilize a free random number generator to select winners without having to incur the costs of printing paper tickets.

(c) How the amendment conforms to the content of the authorizing statutes: Raffles are included in the definition of charitable gaming in KRS 238.505(2). Nothing in this regulation is inconsistent with the definition of raffle in KRS 238.505(7) or the statutory requirements for a raffle found in KRS 238.545(3).

(d) How the amendment will assist in the effective administration of the statutes: This regulation establishes standards for the conduct of raffles utilizing a web-based random number generator and establishes procedures to verify the fairness of these raffles.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation would affect the Public Protection Cabinet, the Department of Charitable Gaming, and the Department's licensees and exempt organizations. The Department currently has 551 licensed charitable organizations and 831 charitable organizations that possess a certificate of exemption. All of these organizations would be eligible to conduct raffles in the manner allowed by this regulatory amendment. Currently the Department has 22 licensed charitable organizations who are conducting online raffles pursuant to the Secretary's Order of March 25, 2020.

(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 comply with this administrative regulation or amendment: Licensees who choose to conduct electronic raffles pursuant to this regulatory amendment will have to identify the web-based random number generator and get approval from the Department to use it. They will still have to comply with all existing statutes and regulations related to the conduct of the raffle and the recordkeeping and reporting 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 additional cost to the Department or its licensees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will save licensees money since they will no longer be required to print paper tickets or purchase a physical receptacle from which to draw the winning ticket. It also enhances the safety of drawings, as all raffles may now be wholly completed electronically.

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

(a) Initially: There are no anticipated additional initial costs to administer this emergency administrative regulation.

(b) On a continuing basis: There are no anticipated additional initial costs to administer this emergency administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this emergency administrative regulation is not anticipated to result in additional costs to the Public Protection Cabinet.

(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 emergency administrative regulation will not necessitate an increase in fees or require funding to the Public Protection Cabinet for implementation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because all applicants will be subject to the application and eligibility requirements established by the emergency administrative regulation equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Protection Cabinet and Department of Charitable Gaming

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.505, KRS 238.500, and KRS 238.545.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This emergency administrative regulation could result in a nominal increase in revenue for the Department from the charitable gaming fee applied to the licensee's gross receipts from the sale of raffle tickets.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This emergency administrative regulation could result in a nominal increase in revenue for the Department from the charitable

gaming fee applied to the licensee's gross receipts from the sale of raffle tickets.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional initial costs to administer this emergency administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional initial costs to administer this emergency administrative regulation.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

STATEMENT OF EMERGENCY
902 KAR 2:020E

This emergency administrative regulation is being promulgated to establish actions that the Department for Public Health may take in response to a declared national or state emergency. These actions include the requirement for reporting both positive and negative test results for Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19). This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. and 4. to protect an imminent threat to public health and to protect human health. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(Emergency Amendment)

902 KAR 2:020E. Reportable disease surveillance.

EFFECTIVE: June 15, 2020

RELATES TO: KRS 211.180(1), 214.010, 214.645, 215.520, 216B.015, 258.065, 258.990, 311.282, 311.571, 315.010, 333.020, 333.130

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 211.180(1)(a), 214.010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180(1)(a) requires the cabinet to implement a statewide program for the detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other diseases and health hazards that may be controlled. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet. This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases, and to permit an accurate assessment of the health status of the Commonwealth.

Section 1. Definitions. (1) "Acid fast bacilli" or "AFB" means the mycobacteria that, if stained, retains color even after they have been washed in an acid solution and may be detected under a microscope in a stained smear.

(2) "Authorize" means for a healthcare facility that participates in the Centers for Medicare and Medicaid (CMS) reporting to confer rights to the Kentucky Department for Public Health in the NHSN database.

(3)~~[at the healthcare facility level.~~

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~~(2)~~ "Health facility" is defined by KRS 216B.015(13).

~~(4)~~~~(3)~~ "Health professional" means a professional licensed under KRS Chapters 311 through 314.

~~(5)~~~~(4)~~ "Healthcare-associated infection" or "HAI" means an infection acquired by a person while receiving treatment for a separate condition in a health care setting. [

~~(5)~~ "HIV case report" means an HIV infection or AIDS diagnosis which:

~~(a)~~ Has been confirmed by laboratory test results; or

~~(b)~~ Meets the definition of AIDS established within the Centers for Disease Control and Prevention (CDC) guidelines.]

(6) "Kentucky [Department for] Public Health Advisory" means a notification to health professionals, health facilities, and laboratories subject to this administrative regulation identifying a new health threat that warrants reporting through the procedures of this administrative regulation.

(7) "Laboratory-confirmed influenza" means influenza diagnosed through testing performed using one (1) of the following methods:

~~(a)~~ Reverse transcriptase polymerase chain reaction (RT PCR);

~~(b)~~ Nucleic acid detection; or

~~(c)~~ Viral culture.

(8) "Medical laboratory" is defined by KRS 333.020(3).

~~(9)~~~~(8)~~ "National Healthcare Safety Network" or "NHSN" means the nation's most widely used healthcare-associated infection (HAI) tracking system as provided to medical facilities by the CDC[Centers for Disease Control and Prevention].

~~(10)~~~~(9)~~ "National reference laboratory" means a laboratory located outside of Kentucky ~~that is~~[which has been] contracted by a Kentucky health professional, laboratory, or healthcare facility to provide laboratory testing.

~~(11)~~ "Novel influenza A virus" means an influenza virus that causes human infection but is different from the seasonal human influenza A virus subtypes and includes viruses predominately of avian and swine origin.

~~(12)~~ "Nucleic acid amplification test" or "NAAT" means the laboratory test used to target and amplify a single deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) sequence, usually for detecting a microorganism.

~~(13)~~~~(10)~~ "Outbreak" means:

~~(a)~~ Two (2) or more cases, including HAIs, that are epidemiologically linked or connected by person, place, or time; or

~~(b)~~ A single case of an HAI not commonly diagnosed.

~~(14)~~~~(11)~~ "Pharmacist" is defined by[means a professional licensed under] KRS 315.010~~(17)~~.

~~(15)~~ "Post-exposure prophylaxis" or "PEP" means taking an antiretroviral medicine after being potentially exposed to HIV to prevent becoming infected.

~~(16)~~ "Pre-exposure prophylaxis" or "PrEP" means daily medicine intended to reduce the chance of getting HIV.

~~(17)~~~~(12)~~ "Select agent" means a biological agent or toxin that could pose a severe threat to public health, plant health, animal product, or plant product as determined by the National Select Agent Registry (NSAR) at www.selectagents.gov.

~~(18)~~~~(13)~~ "Veterinarian" is defined by[means a professional licensed under] KRS 321.181~~(4)~~.

Section 2. Notification Standards. (1) Health Professionals and Facilities.

~~(a)~~ A health professional ~~or~~[and] a health facility shall give notification if:

~~1.~~~~(a)~~ The health professional ~~or~~ a health facility makes a probable diagnosis of a disease specified in Section 3, ~~[5-] 6, 7, 8, 9, 12, 16, 17, 18, or 19~~[40, 43, 44, 45, or 46] of this administrative regulation; and

~~2.~~~~(b)~~ The diagnosis is supported by:

~~a.~~~~(i)~~~~1.a.~~ Clinical or laboratory criteria; and

~~(ii)~~~~b.~~ Case classifications published by the Centers for Disease Control and Prevention at www.cdc.gov/nndss; or

~~b.~~~~2.~~ A health professional's medical opinion that the disease is present.

~~(b)~~~~(2)~~ A single report by a health facility of a condition diagnosed by a test result from the health facility's laboratory shall constitute notification on behalf of the health facility and its

laboratory.

~~(c)~~~~(3)~~ A health facility may designate an individual to report on behalf of the health facility's laboratory, pharmacy, and the health facility's other clinical entities.

~~(d)~~~~(4)~~ Notification shall be given to the local health department serving the ~~county~~[jurisdiction] in which the patient resides.

~~(e)~~~~(5)~~ If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

~~(f)~~~~(6)~~ The reporting health professional ~~or health facility~~ shall furnish:

~~1.~~~~(a)~~ Information required in Section ~~5(6)~~[4(46)] of this administrative regulation; and

~~2.~~~~(b)~~ Clinical, epidemiologic, and laboratory information pertinent to the disease including sources of specimens submitted for laboratory testing.

~~(2)~~~~(7)~~ Medical Laboratories.

~~(a)~~~~Upoñ~~ A laboratory test result ~~that~~[which] indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, ~~[5-] 6, 7, 8, 9, 12, 16, 17, 18, or 19~~[40, 43, 44, 45, or 46] of this administrative regulation ~~shall be reported~~[, the laboratory shall report the result] to the local health department serving the county in which the patient resides.

~~(b)~~~~(8)~~ If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

~~(c)~~~~(9)~~ The reporting laboratory shall furnish the information required in Section ~~5(6)~~[4(46)] of this administrative regulation.

~~(3)~~~~(10)~~ National Reference Laboratories.

~~(a)~~~~Upoñ~~ A test result performed by a national reference laboratory ~~that~~[which] indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, ~~[5-] 6, 7, 8, 9, 12, 16, 17, 18, or 19~~[40, 43, 44, 45, or 46] of this administrative regulation ~~shall be reported by~~[-] the director of a medical laboratory, a health facility, or the health professional that referred the test to the national reference laboratory [shall ensure that the result is reported by the national reference laboratory] to the local health department serving the ~~county~~[jurisdiction] in which the patient resides.

~~(b)~~~~(11)~~ If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

~~(c)~~~~(12)~~ The report shall include the information required by Section ~~5(6)~~[4(46)] of this administrative regulation.

Section 3. Submission of Specimens to the Kentucky Department for Public Health Division of Laboratory Services. (1) A medical laboratory and a national reference laboratory in receipt of diagnostic specimens originating from the Commonwealth of Kentucky shall send direct specimens or pure clinical isolates for diseases outlined in subsection (5) of this section to the Division of Laboratory Services for primary or confirmatory testing and related studies.

(2) A medical laboratory or national reference laboratory using non-culture techniques to identify bacterial agents of diarrheal disease, such as enzyme immunoassays (EIAs) or molecular assays, shall attempt isolation of the etiologic agent identified. Pure clinical isolates shall be submitted to the Division of Laboratory Services.

(3) If the culture attempts do not produce a clinical isolate, the direct specimen, submitted in the appropriate preservative, shall be sent to the Division of Laboratory Services. A submitting laboratory shall provide the name of the etiologic agent detected by the non-culture technique at the time of specimen submission.

(4) A medical laboratory performing this test shall continue to follow the state's requirement for the submission of appropriate materials to the state public health laboratory.

(5) A medical or national reference laboratory shall submit pure[clinical] isolates or, if not available, the direct specimen from the following diseases to the Division of Laboratory Services:

(a) Botulism, with prior approval from the Division of Epidemiology for testing;

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- (b) Brucellosis;
- (c) Campylobacteriosis;
- (d) Candida auris;
- (e) Carbapenem-resistant Acinetobacter;
- (f) Carbapenem-resistant Enterobacteriaceae;
- (g) Carbapenem-resistant Pseudomonas;
- (h) Cholera and diseases caused by other *Vibrio* species;
- (i) ~~(e)~~ Diphtheria;
- (j) ~~(f)~~ *Escherichia coli* O157:H7;
- (k) ~~(g)~~ Hemolytic Uremic Syndrome (HUS) – Post Diarrheal;
- (l) ~~(h)~~ Listeriosis;
- (m) ~~(i)~~ Measles;
- (n) ~~(j)~~ Meningococcal infections;
- (o) ~~(k)~~ Rabies, animal;
- (p) ~~(l)~~ Rubella;
- (q) ~~(m)~~ Salmonellosis;
- (r) ~~(n)~~ Shiga toxin-producing *E. coli* (STEC);
- (s) ~~(o)~~ Shigellosis;
- (t) ~~(p)~~ Tuberculosis;
- (u) ~~(q)~~ Tularemia;
- (v) ~~and~~
- (r) Typhoid fever;
- (w) Vancomycin-intermediate Staphylococcus aureus;
- (x) Vancomycin-resistant Staphylococcus aureus; and
- (y) Zika, with prior approval from the Division of Epidemiology

for testing.

(6) All direct specimens or clinical isolates from enteric disease shall be submitted within seventy-two (72) hours from collection.

Section 4. Laboratory testing and submission of specimens to the Division of Laboratory Services for the identification of M. tuberculosis. (1) A medical laboratory or national reference laboratory shall perform AFB smear and culture, regardless of rapid molecular testing results (i.e. NAAT).

(2) Rapid molecular testing shall be performed for the identification of M. tuberculosis on:

(a) Any diagnostic specimen with an AFB smear positive result; or

(b) Any specimen that originates from an individual with clinical or epidemiological evidence suggesting active tuberculosis.

(3) If rapid molecular testing cannot be performed by the medical laboratory or national reference laboratory, the diagnostic specimen shall be sent to the Division of Laboratory Services.

(4) A medical laboratory or national reference laboratory that has a diagnostic specimen test positive for M. tuberculosis by rapid molecular testing shall send the remainder of that specimen to the Division of Laboratory Services.

(5) Any diagnostic specimen found to be positive for M. tuberculosis by rapid molecular testing or culture testing shall be reported in accordance with Section 7 of this administrative regulation.

Section 5. Reporting Classifications and Methods. (1) Immediate reporting.

(a) A report required by Section 12[40](1) and (2) of this administrative regulation to be made immediately shall be:

1. ~~(a)~~ Made by telephone to the local health department serving the county in which the patient resides; and

2. ~~(b)~~ Followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

~~(b)~~(2) Upon receipt of a report for a disease requiring immediate reporting, the local health department shall:

1. ~~(a)~~ Notify the Kentucky Department for Public Health by telephone; and

2. ~~(b)~~ Assist the department in carrying out a public health response.

~~(c)~~(3) Weekend, evening, or holiday immediate notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

~~(d)~~(4) For the protection of patient confidentiality, a report using the emergency number shall include:

1. ~~(a)~~ The name of the condition being reported; and

2. ~~(b)~~ A telephone number that can be used by the department to contact the reporting health professional or health facility.

~~(2)~~(5) Urgent Reporting.

(a) A report made within twenty-four (24) hours as required by Section 6[5] of this administrative regulation shall be:

1. ~~(a)~~ Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and

2. ~~(b)~~ If submitted by telephone, followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

~~(b)~~(6) Upon receipt of a report for a disease requiring urgent reporting, the local health department shall:

1. ~~(a)~~ Notify the Kentucky Department for Public Health; and

2. ~~(b)~~ Assist the department in carrying out a public health response.

~~(c)~~(7) Weekend, evening, or holiday urgent notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

~~(d)~~(8) For the protection of patient confidentiality, notification using the emergency number shall include:

1. ~~(a)~~ The name of the condition being reported; and

2. ~~(b)~~ A telephone number that can be used by the department to contact the reporting health professional or health facility.

~~(3)~~(9) Priority Reporting.

(a) A report made within one (1) business day as required by Section 7, 11, 12(3), 17(4), or 18[Sections 6, 14(4), and 15] of this administrative regulation shall be:

1. ~~(a)~~ Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and

2. ~~(b)~~ If submitted by telephone, followed up by electronic or fax submission of a report to the local health department serving the county in which the patient resides within one (1) business day.

~~(b)~~(10) Upon receipt of a report for a disease requiring priority reporting, a local health department shall:

1. ~~(a)~~ Investigate the report and carry out public health protection measures; and

2. ~~(b)~~ Notify the Kentucky Department for Public Health of the case by electronic or fax submission within one (1) business day.

~~(c)~~(11) The reporting health department may seek assistance in carrying out public health measures from the Kentucky Department for Public Health.

~~(4)~~(12) Routine Reporting.

(a) A report made within five (5) business days, as required by Section 8, 9, 10, 13(1), 16(1), 17(7), or 20(1)[Sections 7, 8, 9, 11(1), 13, 14(7), and 17] of this administrative regulation, shall be made electronically, by fax, or by mail to the local health department serving the county in which the patient resides.

~~(b)~~(13) Upon receipt of a report of a disease or condition requiring routine reporting, a local health department shall:

1. ~~(a)~~ Make a record of the report;

2. ~~(b)~~ Answer inquiries or render assistance regarding the report if requested by the reporting entity; and

3. ~~(c)~~ Forward the report to the Kentucky Department for Public Health by electronic or fax submission of a report, or in writing within five (5) business days.

~~(5)~~(14) General Reporting. A report made within three (3) months, as required by Section 19[16] of this administrative regulation, shall be made electronically, by fax, or by mail.

~~(6)~~ Reporting requirements.

~~(a)~~(15) A report submitted by fax or by mail shall be made using one (1) of the following reporting forms:

1. ~~(a)~~ EPID 200, Kentucky Reportable Disease Form;

2. ~~(b)~~ EPID 250, Kentucky Reportable MDRO Form, to be used for priority reporting~~[until electronic reporting is available pursuant to Section 9(1) of this administrative regulation];~~

3. ~~(c)~~ EPID 394, Kentucky Reportable Disease Form,

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Hepatitis Infection in Pregnant Women or Child (aged five (5) years or less);

4. ~~(d)~~ EPID 399, Perinatal Hepatitis B Prevention Form for Infants;

5. ~~(e)~~ Adult HIV/~~AIDS~~ Confidential Case Report Form; or
6. ~~(f)~~ Pediatric HIV/~~AIDS~~ Confidential Case Report Form.

~~(b)~~ Information to be reported. Except as provided in subsections ~~(1)(d)(3)~~ and ~~(2)(d)(7)~~ of this section, a report required by this administrative regulation shall include:

1. ~~(a)~~ Patient name;
2. ~~(b)~~ Date of birth;
3. ~~(c)~~ Gender;
4. ~~(d)~~ Race;
5. ~~(e)~~ Ethnicity;
6. ~~(f)~~ Patient address;
7. ~~(g)~~ County of residence;
8. ~~(h)~~ Patient telephone number;
9. ~~(i)~~ Name of the reporting medical provider or facility;
10. ~~(j)~~ Address of the reporting medical provider or facility;

and
11. ~~(k)~~ Telephone number of the reporting medical provider or facility.

~~(c)~~ A reporting health professional shall furnish the information listed in this subsection ~~[(16) of this section]~~ and Section 2(1)(f) ~~[(6)(b)]~~ of this administrative regulation.

Section 6[5]. Notifiable Infectious Conditions Requiring Urgent Notification. (1) Notification of the following diseases shall be considered urgent and shall be made within twenty-four (24) hours:

- ~~(a)~~ Anthrax;
- ~~(b)~~ Botulism;
- ~~(c)~~ Brucellosis (multiple cases, temporally or spatially clustered);
- ~~(d)~~ Diphtheria;
- ~~(e)~~ Hepatitis A, acute;
- ~~(f)~~ Measles;
- ~~(g)~~ Meningococcal infections;
- ~~(h)~~ Middle East Respiratory Syndrome-associated Coronavirus (MERS-CoV) disease;

- ~~(i)~~ Multi-system Inflammatory Syndrome in Children (MIS-C);
- ~~(j)~~ Novel influenza A virus infections;
- ~~(k)~~ Plague;
- ~~(l)~~ Poliomyelitis;
- ~~(m)~~ Rabies, animal;
- ~~(n)~~ Rabies, human;
- ~~(o)~~ Rubella;
- ~~(p)~~ Severe Acute Respiratory Syndrome-associated Coronavirus (SARS-CoV) disease;

~~(q)~~ Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19);

- ~~(r)~~ Smallpox;
- ~~(s)~~ Tularemia;
- ~~(t)~~ Varicella;
- ~~(18)~~ Viral hemorrhagic fevers due to:
 1. ~~(a)~~ Crimean-Congo Hemorrhagic Fever virus;
 2. ~~(b)~~ Ebola virus;
 3. ~~(c)~~ Lassa virus;
 4. ~~(d)~~ Lujjo virus;
 5. ~~(e)~~ Marburg virus; or
 6. ~~(f)~~ New world arenaviruses including:
 - a. ~~(1)~~ Guanarito virus;
 - b. ~~(2)~~ Junin virus;
 - c. ~~(3)~~ Machupo virus; and
 - d. ~~(4)~~ Sabia virus; and
 - e. ~~(19)~~ Yellow fever.

~~(2)~~ To track the spread of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), the virus that causes COVID-19, notification of testing results shall include both positive and negative test results.

Section 7[6]. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Priority Notification. Notification of the following diseases or conditions shall be

considered priority and shall be made within one (1) business day:

(1) Arboviral diseases, neuroinvasive and non-neuroinvasive, including:

(a) California serogroup virus diseases, including diseases caused by:

1. California encephalitis virus;
 2. Jamestown Canyon virus;
 3. Keystone virus;
 4. La Crosse virus;
 5. Snowshoe hare virus; and
 6. Trivittatus viruses;
- (b) Chikungunya virus disease;
- (c) Eastern equine encephalitis virus disease;
- (d) Powassan virus disease;
- (e) St. Louis encephalitis virus disease;
- (f) Venezuelan equine encephalitis disease;
- (g) West Nile virus disease;
- (h) Western equine encephalitis virus disease; and
- (i) Zika virus disease or infection or the birth of a child to a mother who was Zika-positive or Zika-inconclusive during any stage of pregnancy or during the periconceptional period;

(2) Brucellosis (cases not temporally or spatially clustered);

- (3) Campylobacteriosis;
- (4) Carbon monoxide poisoning;
- (5) Cholera;
- (6) Cryptosporidiosis;
- (7) Cyclosporiasis;
- (8) Dengue virus infections;
- (9) Escherichia coli O157:H7;
- (10) Foodborne disease outbreak;
- (11) Giardiasis;
- (12) Haemophilus influenzae invasive disease;
- (13) Hansen's disease (leprosy);
- (14) Hantavirus infection, non-Hantavirus pulmonary syndrome;

- (15) Hantavirus pulmonary syndrome (HPS);
- (16) Hemolytic uremic syndrome (HUS), post-diarrheal;
- (17) Hepatitis B, acute;
- (18) Hepatitis B infection in a pregnant woman;
- (19) Hepatitis B infection in an infant or a child aged five (5) years or less;
- (20) Newborns born to Hepatitis B positive mothers at the time of delivery;

- (21) Influenza-associated mortality;
- (22) Legionellosis;
- (23) Leptospirosis;
- (24) Listeriosis;
- (25) Mumps;
- (26) Norovirus outbreak;
- (27) Pertussis;
- (28) Pesticide-related illness, acute;
- (29) Psittacosis;
- (30) Q fever;
- (31) Rubella, congenital syndrome;
- (32) Salmonellosis;
- (33) Shiga toxin-producing E. coli (STEC);
- (34) Shigellosis;
- (35) Streptococcal toxic-shock syndrome;
- (36) Streptococcus pneumoniae, invasive disease;
- (37) Tetanus;
- (38) Toxic-shock syndrome (other than Streptococcal);
- (39) Tuberculosis;
- (40) Typhoid fever;
- (41) Vibriosis; and
- (42) Waterborne disease outbreak.

Section 8[7]. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Routine Notification. Notification of the following diseases shall be considered routine and shall be made within five (5) business days:

- (1) Acute Flaccid Myelitis;
- (2) Anaplasmosis;
- (3) Babesiosis;

- ~~(4)~~~~(2)~~ Coccidioidomycosis;
- ~~(5)~~~~(3)~~ Creutzfeldt-Jakob disease;
- ~~(6)~~~~(4)~~ Ehrlichiosis/~~Anaplasmosis~~;
- ~~(7)~~~~(5)~~ Hepatitis C, acute;
- ~~(8)~~~~(6)~~ Hepatitis C infection in a pregnant woman;
- ~~(9)~~~~(7)~~ Hepatitis C infection in an infant or a child aged five (5) years or less;
- ~~(10)~~~~(8)~~ Newborns born to Hepatitis C positive mothers at the time of delivery;
- ~~(11)~~~~(9)~~ Histoplasmosis;
- ~~(12)~~ Laboratory-confirmed influenza;
- ~~(13)~~~~(10)~~ Lead poisoning;
- ~~(14)~~~~(11)~~ Legionellosis;
- ~~(14)~~ Lyme Disease;
- ~~(15)~~~~(13)~~ Malaria;
- ~~(16)~~~~(14)~~ Spotted Fever Rickettsiosis (Rocky Mountain Spotted Fever);
- ~~(17)~~~~(15)~~ Toxoplasmosis; and
- ~~(18)~~~~(16)~~ Trichinellosis (Trichinosis).

Section ~~9~~~~(8)~~. Notifiable Infectious Conditions Requiring Routine Notification by Electronic Laboratory Reporting. (1) ~~[Beginning October 1, 2016,]~~ Notification of the following ~~[diseases]~~ shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:

- (a) ~~[Cyclosporiasis;~~
 - ~~(b) Giardiasis;~~
 - ~~(c) Hepatitis B laboratory test results, which shall:~~
 - ~~1. Be [whether] reported as positive or negative; and~~
 - ~~2.:~~
 - ~~4.] Include the serum bilirubin levels or serum alanine aminotransferase taken within ten (10) days of the test of a patient who has tested positive; and~~
 - ~~(b) [or~~
 - ~~2. Include the serum alanine aminotransferase levels taken within ten (10) days of the test of a patient who tested positive;~~
 - ~~(d) Hepatitis C laboratory test results, which shall:~~
 - ~~1. Be [whether] reported as positive or negative; and~~
 - ~~2.:~~
 - ~~4.] Include the serum bilirubin levels or serum alanine aminotransferase taken within ten (10) days of the test of a patient who has tested positive[; or~~
 - ~~2. Include the serum alanine aminotransferase levels taken within ten (10) days of the test of a patient who tested positive; and~~
 - ~~(e) Varicella laboratory test results reported as positive for:~~
 - ~~1. Isolation of varicella virus from a clinical specimen;~~
 - ~~2. Varicella antigen detected by direct fluorescent antibody test;~~
 - ~~3. Varicella-specific nucleic acid detected by polymerase chain reaction (PCR); or~~
 - ~~4. A significant rise in serum anti-varicella immunoglobulin G (IgG) antibody level by a standard serologic assay].~~
- (2) Reports made pursuant to this section shall include a diagnosis.

Section ~~10~~~~(9)~~. Multi-Drug Resistant Organisms and Other Organisms Requiring Routine Notification by Electronic Laboratory Reporting. (1) ~~[Beginning October 1, 2016,]~~ Notification of the following diseases shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:

- (a) Clostridioides (formerly Clostridium) difficile (C. difficile) identified from a positive laboratory test result for C. difficile toxin A or B (includes molecular assays {PCR} or toxin assays) or a toxin-producing organism detected by culture or other laboratory means performed on a stool sample;
- (b) Enterobacteriaceae species resistant to ceftazidime, ceftriaxone, or cefotaxime [Vancomycin-intermediate Staphylococcus aureus (VISA), which includes S. aureus cultured from any specimen that the results show a minimum inhibitory

concentration (MIC) of 4-8 µg/mL per standard laboratory methods;

~~(b) Vancomycin-resistant Staphylococcus aureus (VISA), which includes S. aureus cultured from any specimen that the results show a minimum inhibitory concentration (MIC) of greater than or equal to 16 µg/mL per standard laboratory methods];~~

~~(c) Methicillin-resistant Staphylococcus aureus (MRSA), which includes S. aureus cultured from any specimen that tests oxacillin-resistant, ceftazidime-resistant, or methicillin-resistant by standard susceptibility testing methods, or by a laboratory test that is FDA-approved for MRSA detection from isolated colonies. These methods may also include a positive result by any FDA-approved test for MRSA detection; and~~

~~(d) Vancomycin-resistant Enterococcus species (VRE), only those identified to the species level, that are resistant to Vancomycin by standard susceptibility testing methods or by results from any FDA-approved test for VRE detection from specific specimen sources];~~

~~(e) Clostridium difficile (C. difficile) identified from a positive laboratory test result for a C. difficile toxin A or B (includes molecular assays {PCR} or toxin assays) or a toxin-producing organism detected by culture or other laboratory means performed on a stool sample;~~

~~(f) Carbapenem-resistant Enterobacteriaceae (CRE), which includes Escherichia coli, Klebsiella oxytoca, Klebsiella pneumonia, or Enterobacter species testing resistant to imipenem, meropenem, doripenem, or ertapenem by standard susceptibility testing methods or by production of carbapenemase by an isolate demonstrated by using a recognized test;~~

~~(g) Cephalosporin-resistant Klebsiella, which includes Klebsiella oxytoca, Klebsiella pneumonia, or a Klebsiella species testing nonsusceptible (resistant or intermediate) to ceftazidime, cefotaxime, ceftriaxone, or cefepime;~~

~~(h) Extended-spectrum beta-lactamase Gram-negative organisms (ESBL) Enterobacteriaceae species nonsusceptible (resistant or intermediate) to ceftazidime, cefepime, ceftriaxone, or cefotaxime;~~

~~(i) Multidrug-resistant Acinetobacter Nonsusceptibility (resistant or intermediate) to at least one (1) agent in at least three (3) antimicrobial classes of the following six (6) classes: 1. Ampicillin-sulbactam;~~

~~2. Cephalosporins (cefepime, ceftazidime);~~

~~3. β-lactam-β-lactamase inhibitor combination (piperacillin, piperacillin-tazobactam);~~

~~4. Carbapenems (imipenem, meropenem, doripenem);~~

~~5. Fluoroquinolones (ciprofloxacin or levofloxacin); and~~

~~6. Aminoglycosides (gentamicin, tobramycin, or amikacin);~~

~~and~~

~~(j) Multidrug-resistant Pseudomonas Nonsusceptibility, resistant or intermediate, to at least one (1) agent in at least three (3) antimicrobial classes of the following five (5) classes:~~

~~1. Cephalosporins (cefepime, ceftazidime);~~

~~2. β-lactam-β-lactamase inhibitor combination (piperacillin, piperacillin-tazobactam);~~

~~3. Carbapenems (imipenem, meropenem, doripenem);~~

~~4. Fluoroquinolones (ciprofloxacin or levofloxacin); and~~

~~5. Aminoglycosides (gentamicin, tobramycin, or amikacin)].~~

(2) The report of an organism under this section shall include the following:

- (a) Date of specimen collection;
- (b) Source of specimen;
- (c) Susceptibility pattern; and
- (d) Name of the ordering health professional.

(3) Upon a test result performed by a medical laboratory ~~that~~~~[which]~~ indicates infection with an agent associated with one (1) or more of the diseases or conditions or a multi-drug resistant organism specified in this section, the director of the medical laboratory shall electronically report the result to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) days.

(4) The report shall include a diagnosis.

Section 11. Multi-Drug Resistant Organisms and Other

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Organisms Requiring Priority Reporting by EPID 250 and by electronic laboratory reporting to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within one (1) business day. Notification of the following diseases shall be considered priority:

(1) Candida auris - Laboratory Criteria for Diagnosis shall include:

(a) Confirmatory laboratory evidence for detection of Candida auris from any body site using either culture or a culture independent diagnostic test (e.g., Polymerase Chain Reaction {PCR}); or

(b) Presumptive laboratory evidence for detection of Candida haemulonii from any body site using a yeast identification method that is not able to detect Candida auris, and either the isolate or specimen is not available for further testing, or the isolate or specimen has not yet undergone further testing;

(2) Carbapenem-resistant – Acinetobacter – Any Acinetobacter species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to 8 µg/mL by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(3) Carbapenem-resistant Enterobacteriaceae (CRE). Any Enterobacteriaceae species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to 4 µg/mL, or ertapenem with MIC value greater than or equal to 2 µg/mL, by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(4) Carbapenem-resistant – Pseudomonas – Any Pseudomonas species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to 8 µg/mL by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(5) Vancomycin-intermediate Staphylococcus aureus (VISA), which includes S. aureus cultured from any specimen having a minimum inhibitory concentration (MIC) of 4-8 µg/mL for vancomycin per standard laboratory methods; and

(6) Vancomycin-resistant Staphylococcus aureus (VISA), which includes S. aureus cultured from any specimen having a minimum inhibitory concentration (MIC) of greater than or equal to 16 µg/mL for vancomycin per standard laboratory methods.

Section 12[10]. Newly Recognized Infectious Agents, HAI Outbreaks, Emerging Pathogens, and Pathogens of Public Health Importance. (1) The following shall be reported immediately by telephone to the Kentucky Department for Public Health:

(a) A suspected incidence of bioterrorism caused by a biological agent;

(b) Submission of a specimen to the Kentucky Division of Laboratory Services for select agent identification or select agent confirmation testing; or

(c) An outbreak of a disease or condition that resulted in multiple hospitalizations or death.

(2) An unexpected pattern of cases, suspected cases, or deaths that[which] may indicate the following shall be reported immediately by telephone to the local health department in the county where the health professional is practicing or where the facility is located:

(a) A newly-recognized infectious agent;

(b) An outbreak;

(c) An emerging pathogen that[which] may pose a danger to the health of the public;

(d) An epidemic; or

(e) A noninfectious chemical, biological, or radiological agent.

(3) A report of the following shall be considered priority and shall be reported to the local health department in the county where the health professional is practicing or where the facility is located within one (1) business day:

(a) Suspected Staphylococcal or other foodborne intoxication;

or

(b) Salmonellosis or other foodborne or waterborne infection.

(4) The local health department shall:

(a) Investigate the outbreak or occurrence;

(b) Carry out public health protection measures to address

the disease or condition involved; and

(c) Make medical and environmental recommendations to prevent future similar outbreaks or occurrences.

(5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 13[14]. Laboratory Surveillance. (1) Medical or national reference laboratory results for the following shall be considered routine:

(a) Influenza virus isolates;

(b) PCR-positive test results for influenza virus; and

(c) DNA molecular assays for influenza virus.

(2) The report shall include specific laboratory information pertinent to the result.

(3) Upon request by the Kentucky Department for Public Health, a health facility laboratory or a medical laboratory shall report the number of clinical isolates and information regarding the antimicrobial resistance patterns of the clinical isolates at intervals no less frequently than three (3) months for the following:

(a) Acinetobacter baumannii complex;

(b) Enterobacter cloacae complex;

(c) Enterococcus species;

(d) Escherichia coli;

(e) Klebsiella oxytoca;

(f) Klebsiella pneumoniae;

(g) Pseudomonas aeruginosa;

(h) Staphylococcus aureus; [

(b) Enterococcus species;] or

(i)[(e)] An organism specified in a request that includes a justification of its public health importance.

(4) A facility that reports antimicrobial resistance (AR) data to the National Healthcare Safety Network (NHSN) AUR (Antimicrobial Use & Resistance) module shall meet this reporting requirement through NHSN reporting.

Section 14[12]. Healthcare-Associated Infection Surveillance.

(1) A healthcare facility in Kentucky that participates in CMS reporting programs shall authorize the CDC to allow the Kentucky Department for Public Health to access health care-associated infection data reported to NHSN.

(2) The Kentucky Department for Public Health shall preserve patient confidentiality and shall not disclose to the public any patient-level data obtained from any health care facility.

(3) The Kentucky Department for Public Health may issue reports to the public regarding healthcare-associated infections in aggregate data form that[which]:

(a) May identify individual health care facilities; and

(b) Shall comply with methodology developed by the CDC and CMS for national reporting of health care-associated infections.

(4) The Kentucky Department for Public Health may evaluate healthcare-associated infection data for accuracy and completeness.

Section 15. Antimicrobial Use Reporting. (1) A short-term acute-care hospital in Kentucky that participates in the Centers for Medicare and Medicaid Services (CMS) reporting programs shall report data on facility-wide inpatient antimicrobial use to the Kentucky Department for Public Health, Healthcare-Associated Infection/Antibiotic Resistance (HAI/AR) Prevention Program, on a quarterly basis, effective January 1, 2021. Critical access hospitals shall be exempt.

(2) Reporting deadlines shall be consistent with the CMS reporting program submission deadlines of data to the NHSN.

(3) The HAI/AR Prevention Program shall provide the specifications for data submission.

(4) Hospitals shall include aggregated antimicrobial use and patient day data for all inpatient units (i.e., facility-wide inpatient) included in the NHSN Laboratory-identified (LabID) MRSA Bacteremia reporting.

(5) The antimicrobial use numerator shall be days of therapy (DOTs) as defined by the NHSN Antimicrobial Use and Resistance (AUR) Module, available at [//www.cdc.gov/nhsn/pdfs/pscmanual/11pscaurcurrent.pdf](http://www.cdc.gov/nhsn/pdfs/pscmanual/11pscaurcurrent.pdf).

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(6) Total DOTs shall be submitted for each of the following antimicrobials:

- (a) Azithromycin;
- (b) Cefepime;
- (c) Ceftazidime;
- (d) Ceftriaxone;
- (e) Ciprofloxacin;
- (f) Clindamycin;
- (g) Daptomycin;
- (h) Ertapenem;
- (i) Imipenem;
- (j) Levofloxacin;
- (k) Linezolid;
- (l) Meropenem;
- (m) Moxifloxacin;
- (n) Piperacillin-tazobactam; and
- (o) Vancomycin.

(7) Total DOTs for the listed drugs shall include only administrations via the intravenous and digestive tract routes.

(8) The denominator for antimicrobial use reporting shall be patient days as defined by the NHSN LabID Module available at https://www.cdc.gov/nhsn/pdfs/pscreport/12pscmdro_cdacurrent.pdf.

(9) A hospital that reports antimicrobial use data to the NHSN AUR Module shall meet this reporting requirement through NHSN reporting.

Section 16[13]. Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) Surveillance. (1) All case reports shall be submitted to the HIV/AIDS Surveillance Program of the Kentucky Department for Public Health, Division of Epidemiology and Health Planning, or its designee.[A report of an HIV infection or AIDS diagnosis shall be considered routine and shall be reported] within five (5) business days of diagnosis on one (1) of the following forms:

- (a) Adult HIV/[AIDS] Confidential Case Report Form; or
- (b) Pediatric HIV/[AIDS] Confidential Case Report Form.

(2) Health professionals and medical laboratories shall report:

(a) A positive test result for HIV infection including a result from:

- 1. 3rd generation immunoassay;
- 2. 4th generation immunoassay;
- 3. Western Blot;
- 4. PCR;
- 5. HIV-1 or HIV-2 differentiating such as Multispot;
- 6. HIV antigen;
- 7. HIV antibody;
- 8. CD4+ assay including absolute CD4+ cell counts and CD4+%;

9. HIV Viral Load Assay including detectable and undetectable values;[or]

0. HIV genetic sequencing; or

1. A positive confirmatory serologic test result for HIV infection; or

(b) A diagnosis of AIDS that meets the definition of AIDS established within the CDC guidelines.

(3) The most recent negative HIV test, if available, shall be submitted with the report required by paragraph (a) or (b) of this subsection.

(4) Any request for data related to HIV infection or AIDS shall be made to the Department for Public Health, Division of Epidemiology and Health Planning [A case report for a resident of Jefferson, Henry, Oldham, Bullitt, Shelby, Spencer, or Trimble County shall be submitted to the HIV/AIDS Surveillance Program of the Louisville Metro Health Department.

~~(4) A case report for a resident of the remaining Kentucky counties shall be submitted to the HIV/AIDS Surveillance Program of the Kentucky Department for Public Health, Division of Epidemiology and Health Planning.~~

(5) A case report for a person with an HIV infection without a diagnosis of AIDS, or HIV infection with a diagnosis of AIDS shall include the following information:

- (a) The patient's full name;
- (b) The patient's complete address;

- (c) Date of birth using the format MMDDYYYY;
- (d) Gender;
- (e) Race;
- (f) Ethnicity;
- (g) Risk factor as identified by CDC;
- (h) County of residence;
- (i) Name of provider and facility submitting report including contact information;
- (j) Specimen collected;
- (k) Date and type of HIV test performed using the format MMDDYYYY;
- (l) Results of CD4+ cell counts and CD4+%;
- (m) Results of viral load testing;
- (n) Results of PCR, HIV culture, HIV antigen, and HIV antibody, if performed;
- (o) Results of TB testing, if available;[and]
- (p) Any documented HIV negative test, if available;
- (q) History of PrEP or PEP treatment, if available;
- (r) Antiretroviral treatment, if available;
- (s) HIV status of the person's partner, spouse, or children, as applicable;

(t)[-

~~(6) A reports of an AIDS case shall include:~~

~~(a) Information in subsections (2) through (5) of this section;~~

~~(b) Opportunistic infections diagnosed; and~~

~~(u)[(e)] Date of onset of illness.~~

~~(6)[(7)] A report of AIDS shall be made whether or not the patient has been previously reported as having an HIV infection.~~

~~(7)[(8)] If the patient has not been previously reported as having an HIV infection, the AIDS report shall also serve as the report of HIV infection [as required by subsection (2) through (5) of this section].~~

Section 17[14]. Sexually Transmitted Disease (STD). (1) Notification of a probable diagnosis of an STD as specified in subsection (4) or (7) of this section shall be made.

(2) The report shall provide the following information:

(a) Pregnancy status; and

(b) Clinical, epidemiologic, laboratory, and treatment information pertinent to the disease.

(3) Upon a laboratory test result that[which] indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in subsection (4) or[and] (7) of this section, a medical laboratory shall report to the Kentucky Department for Public Health information required by Section 5(6)(b)[4(16)] of this administrative regulation.

(4) Sexually Transmitted Diseases Requiring Priority Notification. A report of the following shall be considered priority and shall be made within one (1) business day:

(a) Each pregnant female who has tested positive for syphilis regardless of stage[Congenital syphilis]; or

(b) Syphilis - primary, secondary, or early latent.

(5) Upon receipt of a report for a disease or condition specified in subsection (4) of this section, a local health department shall:

(a) Investigate the report;

(b) Carry out public health protection measures to address the disease or condition; and

(c) Forward the report to the Kentucky Department for Public Health within one (1) business day.

(6) The local health department may seek assistance from the Kentucky Department for Public Health.

(7) Sexually Transmitted Diseases Requiring Routine Notification. A report of the following shall be considered routine and shall be made within five (5) business days:

(a) Chancroid;

(b) Chlamydia trachomatis infection;

(c) Gonorrhea;

(d) Granuloma inguinale;

(e) Lymphogranuloma venereum; or

(f) Syphilis, other than primary, secondary, early latent, or congenital.

(8) Upon receipt of a report for a disease or condition specified in subsection (7) of this section, a local health

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department shall:

- (a) Make a record of the report using Form EPID 200, Kentucky Reportable Disease Form;
- (b) Forward the report to the Kentucky Department for Public Health within five (5) business days; and
- (c) Render assistance if requested by the reporting entity or the Kentucky Department for Public Health.

Section 18[15]. Tuberculosis. (1) A pharmacist shall give notice if two (2) or more of the following medications used for the initial treatment of active tuberculosis are dispensed to an inpatient in a health facility or to an ambulatory patient in a health facility or a pharmacy:

- (a) Ethambutol;
- (b) Isoniazid;
- (c) Pyrazinamide; and
- (d) Rifampin or rifabutin;
- (b) Isoniazid;
- (c) Pyrazinamide; and
- (d) Ethambutol.

(2)(a) A report of tuberculosis shall be considered priority and shall be reported to the local health department serving the county in which the patient resides.

(b)[(3)] If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(3)[(4)] The report shall include:

- (a) Information required in Section 5(6)(b)[4(16)] of this administrative regulation; and
- (b) Names of the medications dispensed.

Section 19[16]. Asbestosis, Coal Worker's Pneumoconiosis, and Silicosis. (1) A health professional shall report a diagnosis of the following to the Kentucky Department for Public Health within three (3) months of diagnosis:

- (a) Asbestosis;
- (b) Coal worker's pneumoconiosis; or
- (c) Silicosis.

(2) A report required under this section shall include the information required in Section 5(6)(b)[following information regarding the patient:

- (a) Name;
- (b) Address;
- (c) Date of birth; and
- (d) County of residence].

Section 20[17]. Reporting of Communicable Diseases in Animals. (1) A diagnosis in an animal of a condition known to be communicable to humans, except for rabies, shall require routine notification.

(2) A veterinarian shall report the diagnosis within five (5) business days to the local health department serving the county in which the animal is located.

(3) If a laboratory test indicates infection of an animal with an agent associated with a condition known to be communicable to humans, the director of a medical laboratory shall report the result to the local health department serving the county in which the animal is located within five (5) business days.

(4) The local health department receiving the report shall:

- (a) Investigate the report;
- (b) Carry out public health protection measures for the control of communicable diseases; and
- (c) Forward the report to the Kentucky Department for Public Health within five (5) business days.

(5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 21[18]. Kentucky [Department for] Public Health Advisory. (1) If the Secretary of the Cabinet for Health and Family Services or the Commissioner of the Department for Public Health determines that a disease not presently listed in this administrative regulation requires reporting, the secretary or commissioner may issue a Kentucky Public Health Advisory.

(2) The Kentucky Public Health Advisory shall include:

- (a) Date and time the advisory is issued;
- (b) A unique number to identify the advisory;
- (c) Names for the disease or condition;
- (d) A description of the disease or condition;
- (e) Recommendations for health professionals, health facilities, and laboratories; and
- (f) Notification requirements including:
 - 1. The notification time interval;
 - 2. Methods for notification; and
 - 3. Forms to be completed and submitted with the notification.

(3) The duty to report by health professionals, health facilities, and laboratories pursuant to a Kentucky Public Health Advisory shall begin upon receipt of the advisory and shall remain in effect until the advisory is rescinded by order of the secretary or the commissioner.

Section 22. Penalty. If the cabinet has cause to believe that a physician willfully neglects or refuses to notify the cabinet in accordance with this administrative regulation, pursuant to KRS 214.990(1) the cabinet shall make a referral to the appropriate professional licensing board.

Section 23[19]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) [Form] "EPID 200, Kentucky Reportable Disease Form", 4/2020[6/2016];
- (b) [Form] "EPID 250, Kentucky Reportable MDRO Form", 4/2020[6/2014];
- (c) [Form] "EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (aged five years or less)", 4/2020[9/2016];
- (d) [Form] "EPID 399, Perinatal Hepatitis B Prevention Form for Infants", 6/2020[4/2012];
- (e) [Form] "Adult HIV Confidential Case Report Form", 11/2019[3/2013]; and
- (f) [Form] "Pediatric HIV Confidential Case Report Form", 11/2019[3/2013].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary
APPROVED BY AGENCY: June 12, 2020
FILED WITH LRC: June 15, 2020 at noon
CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases, and to permit an accurate assessment of the health status of the Commonwealth.

(b) The necessity of this administrative regulation: KRS 211.180(1) requires the cabinet to implement and maintain a statewide program for the detection, prevention, and control of reportable diseases. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation delineates which diseases are reportable including the urgency of the notification.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will allow clinicians including every physician, advanced practice registered nurse, and head of family to notify the local health department of the existence of the diseases specified in the administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the list of reportable diseases, which includes Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19) and Multi-system Inflammatory Syndrome in Children (MSI-C), adds the provisions for submitting specimens for the identification of M. tuberculosis, updates the reporting requirements for multi-drug resistant organisms, adds the provisions for antimicrobial use reporting, updates the reporting requirements for HIV infection, adds reference to penalties for non-reporting, and updates the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to accurately capture pertinent information regarding M. tuberculosis; to maintain current reporting requirements based on the evolution of multi-drug resistant organisms; to collect data on facility-wide inpatient antimicrobial use as part of the Healthcare-Associated Infection/Antibiotic Resistance (HAI/AR) Prevention Program consistent with the CMS reporting program; to maintain a current surveillance system regarding HIV and AIDS including genetic sequencing, documentation of HIV negative tests, history of PrEP treatment, and antiretroviral treatment; to promote compliance in the reporting of communicable diseases; and to provide updated material to be incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.090(3) authorizes the secretary to adopt rules and regulations necessary to regulate and control all matters set forth in KRS 211.180. KRS 211.180(1) authorizes the cabinet to enforce the administrative regulations promulgated by the secretary of the Cabinet for Health and Family Services including policies, plans, and comprehensive programs relating to the detection, prevention, and control of communicable diseases. This amendment provides necessary updates needed to remain current in the accurate reporting of diseases.

(d) How the amendment will assist in the effective administration of the statutes: By updating this administrative regulation to reflect the current nature of multi-drug resistant organisms, the antimicrobial use surveillance, the provisions needed for accurate data collection regarding M. tuberculosis and HIV/AIDS, the list of reportable diseases, and the reference to penalties for non-reporting, the amendment allows for up-to-date compliance between the statutes and the administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected by this administrative regulation include all health facilities as defined by KRS 216B.015(13), health professionals licensed under KRS Chapters 311 through 314, medical laboratories as defined by KRS 333.020(3), national reference laboratories contracted by Kentucky health professionals, laboratories, or healthcare facilities, pharmacists licensed under KRS Chapter 315, and veterinarians licensed under KRS Chapter 321. In addition, all citizens of the Commonwealth will be affected as a result of this amendment.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The regulated entities in question (3) will need to be aware of the updated lists of diseases and conditions requiring reporting including infectious agents and multi-drug resistant organisms. They will need to be aware of the specimens and isolates requiring submission to the Division of Laboratory Services. They also need to be aware of updated

requirements regarding laboratory testing and submission of M. tuberculosis. Furthermore, entities need to be aware of immediate, urgent, priority, routine, and general reporting methods.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs associated with compliance is unknown. Healthcare facilities and physicians already report communicable diseases.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the benefits of the timely and appropriate prevention and control of communicable diseases will be afforded to all citizens of the Commonwealth.

(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 costs.

(b) On a continuing basis: There is no increase in ongoing costs associated with the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The reportable disease programs affected by this administrative regulation are funded through a mix of state general fund dollars, federal dollars, and specialized grants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees or funding is not necessary to implement the changes with this amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not contain fees.

(9) TIERING: Is tiering applied? Tiering is not applied. While the list of reportable diseases and conditions is separated by immediate, urgent, priority, routine, or general notification, all healthcare facilities and physicians are required to report any known communicable disease.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division of Epidemiology and Health Planning, as well as all local health departments.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.090(3), 211.180(1), and 214.010

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? There are no increased costs to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no increased costs to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY
902 KAR 4:140E**

This emergency administrative regulation is being promulgated to establish actions that the Department for Public Health may take in response to a declared national or state emergency. These actions include enhancing HANDS services to include tele-service delivery methods. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. and 4. to protect human health. This emergency administrative regulation will not be replaced by an ordinary administrative regulation as these measures are in direct response to the declared state public health emergency.

ANDY BESHEAR, Governor
ERIC FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(New Emergency Administrative Regulation)**

902 KAR 4:140E. Enhanced HANDS services in response to declared national or state public health emergency.

EFFECTIVE: May 19, 2020
RELATES TO: KRS 13B.080-13B.160, 200.700, 211.090, 211.180, 211.689
STATUTORY AUTHORITY: KRS 194A.050, 211.690
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 211.690 authorizes the Cabinet for Health and Family Services to implement a voluntary statewide home visitation program for the purpose of providing assistance to at-risk parents. This administrative regulation establishes the provisions for providing home visitation through tele-service delivery methods if a national or state public health emergency has been declared.

Section 1. Definitions. (1) "Declared national or state public health emergency" means a formal declaration by the President of the United States or the Governor of Kentucky of an extraordinary event that is determined to constitute a public health risk through the spread of disease.

(2) "Tele-service" means a home visitation service provided through telephone or video communication with the HANDS provider, parent, and child present in real time.

Section 2. Enhanced Home Visitation Services in Response to a Declared National or state Public Health Emergency. (1) HANDS services and requirements may be enhanced to allow for tele-service delivery methods if a national or state public health emergency has been declared.

(2) HANDS home visitation services that are otherwise designated as face-to-face in accordance with 902 KAR 4:120 may be provided through tele-service delivery methods with informed parental consent. These services include those listed in 902 KAR 4:120, Section 2(4), 2(5), and 4.

(3) Tele-service delivery methods shall be reimbursed at the usual and customary rate.

(4) Tele-service delivery methods in the manner prescribed by this section shall only be utilized during a declared national or state public health emergency.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 14, 2020
FILED WITH LRC: May 19, 2020 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 24, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing

shall notify this agency in writing by August 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for HANDS home visitation services to continue through tele-service delivery methods during a declared national or state public health emergency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure HANDS home visitation services continue to be provided during times of a national or state public health emergency when traditional face-to-face service delivery methods may not be available.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.690 establishes the HANDS program within the cabinet for providing assistance to at-risk parents during the prenatal period up to the child's third (3rd) birthday.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will help to ensure HANDS services can continue to be provided by allowing alternative methods for service delivery that is consistent with the guidance from the Centers for Disease Control and Prevention (CDC) and Health Resources and Services Administration (HRSA).

(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 HANDS program serves approximately 10,000 families annually. Services are provided through fifty-eight (58) local health departments and three (3) contracted agencies. There are approximately 600 HANDS staff statewide.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: Providers electing to provide services through tele-service delivery methods will need to obtain and document informed parental consent for the service

delivery method. In addition, providers will need to ensure the voice and video over the internet protocol used for tele-service delivery methods meet the confidentiality requirements of HIPAA. Parents will need to make themselves available for the tele-service delivery method, and give informed consent for same.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs of providing HANDS services through tele-service delivery methods is unknown at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children and families will continue to receive needed HANDS support services. Providing services through tele-service delivery methods helps to ensure a continuity of services during a declared national or state public health emergency. There has been much published about the importance of sticking to a routine, especially for families with young children. Tele-service delivery methods will help families to continue with these daily routines while protecting all individuals from any potential exposure to any illnesses.

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

(a) Initially: There is no cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no ongoing costs for implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department for Medicaid Services has issued an emergency regulation that will allow for reimbursement for telehealth methods of service delivery for services designated as face-to-face services. That will allow the department to seek Medicaid reimbursement for HANDS services provided through tele-service delivery methods. Other sources of funding include state and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees or funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation will affect all families and providers equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Division of Maternal and Child Health within the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.690.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will have no impact on costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will have no impact on costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
921 KAR 4:116E

This emergency administrative regulation is necessary in order to immediately utilize federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to expand eligibility for services and programs funded by the Low Income Home Energy Assistance Program (LIHEAP) Block Grant. The CARES Act authorizes states to raise the eligibility income limit for LIHEAP services furnished during fiscal years 2020 and 2021, including services furnished with the state's regular LIHEAP appropriations during those years. This amendment also expands LIHEAP to offer more assistance in paying for summer cooling utilities. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)2. and 4., as federal funding will be lost if not used as soon as possible, and the expansion of program eligibility and services will protect human health and welfare in eligible households within Kentucky. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 4:116E. Low Income Home Energy Assistance Program or "LIHEAP".

EFFECTIVE: May 28, 2020

RELATES TO: KRS 45.357, 194A.010, 194A.050(1), 194A.060, 194A.070, 45 C.F.R. Part 96 Subpart H, 42 U.S.C. 8621-8627, 42 U.S.C. 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 8621

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has the responsibility under 42 U.S.C. 8621 to administer the Low Income Home Energy Assistance Program to help low-income households meet the cost of home energy. This administrative regulation establishes the eligibility and benefits criteria for heating and cooling assistance. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with KRS 45.357. The imposition of additional requirements and responsibilities is to ensure necessary compliance with applicable state laws.

Section 1. Definitions. (1) "Agency" means Community Action Kentucky (CAK), or a local community action agency contracted to provide LIHEAP.

(2) "Annual low income home energy assistance program state plan" means an application prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87.

(3) "Authorized representative" means the person who presents to an agency a written statement signed by the head of the household, or spouse of the head of the household,

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authorizing that person to apply on the household's behalf.

(4) "Crisis component" means the component that provides assistance to households that are experiencing a home heating or cooling crisis.

(5) "Economic unit" means one (1) or more persons sharing common living arrangements.

(6) "Emergency" means, at the time of application, the household:

- (a) Is without heat;
- (b) Will be disconnected from a utility service within forty-eight (48) hours;
- (c) Will be without bulk fuel within four (4) days; or
- (d) Will be without cooling as specified in Section 3 of this administrative regulation.

(7) "Energy" means electricity, gas, and other fuel that is used to sustain reasonable living conditions.

(8) "Gross household income" means all earned and unearned income, including lump sum payments received by a household during the calendar month preceding the month of application.

(9) "Heating season" means the period from October through April.

(10) "Household" means an individual or group of individuals who are living together in the principal residence as one (1) economic unit and who purchase energy in common.

(11) "Household demographics" means an applicant's:

- (a) Address;
- (b) Household composition that includes:
 - 1. Size;
 - 2. Age group;
 - 3. Relationship to applicant;
 - 4. Sources of income;
 - 5. Liquid assets; and
 - 6. Type of housing; and
- (c) Heat source.

(12) "Level of poverty" or "poverty level" means the degree to which a household's gross income matches the official poverty income guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(13) "Life-threatening situation" means, at the time of application, a household is or will be without heat or cooling within eighteen (18) hours and temperatures are at a dangerous level as determined by the National Weather Service.

(14) ["Poverty level" means the "level of poverty", as defined in subsection (12) of this section.

(15) "Principal residence" means the place:

- (a) Where a person is living voluntarily and not on a temporary basis;
- (b) An individual considers home;
- (c) To which, when absent, an individual intends to return; and
- (d) Is identifiable from another residence, commercial establishment, or institution.

(16) "Subsidy component" means the heating or cooling component that provides an eligible household with:

- (a) A [one (1) time annual] payment to the household's energy provider; or
- (b) A payment [Payment] to a landlord, if utilities are included in the rent.

Section 2. Application. (1) A household or authorized representative applying for LIHEAP shall provide to an agency the following:

- (a) Proof of household income;
- (b) [Statement of liquid resources;
- (c)] Most recent:
 - 1. Heating bill;
 - 2. Cooling bill; or
 - 3. Verification that heating or cooling is included in the rent;
- (d)] Statement of household demographics; and
- (e)] A Social Security number, or a permanent residency card, for each household member.

(2) An application shall not be considered complete until the required information, as specified in subsection (1) of this section,

is received by the agency.

Section 3. Eligibility Criteria. (1) Income. Gross household income shall be at or below 130 percent of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services pursuant to [7, under authority of] 42 U.S.C. 9902(2), unless:

- (a) Program funding is enhanced through a federal or state award; or
- (b) The cabinet approves an increase to the poverty income guidelines due to funding availability.

(2) [Liquid assets.

(a) The household shall have total liquid assets at time of application of not more than:

- 1. \$2,000;
- 2. \$3,000 if at least one (1) member in the household is:
 - a. Age sixty (60) or older; or
 - b. Disabled; or
- 3. \$4,000, if a member of the household has an illness which requires liquid resources to be accessed regularly for medical and living expenses.

(b) An excluded asset shall be:

- 1. A vehicle;
- 2. Household goods;
- 3. Personal effects;
- 4. A principal residence;
- 5. Cash surrender value of an insurance policy;
- 6. A prepaid burial policy;
- 7. Real property; and
- 8. Cash on hand or in a bank account if the cash is considered as income as specified under subsection (1) of this section.

(3) The household shall be responsible for paying:

- (a) Home heating;
- (b) Cooling costs; or
- (c) Heating or cooling costs as an undesignated portion of the rent.

(4) Crisis component. In addition to meeting the criteria in subsections (1) and (2) [through (3)] of this section, an applicant shall:

- (a) Be within four (4) days of running out of fuel, if propane, fuel oil, coal, wood, or kerosene is the primary heat source;
- (b) Have received a past-due or disconnect notice, if natural gas or electric is the primary heat or cooling source; or
- (c) Have received a notice of eviction for nonpayment of rent, if home heating or cooling cost is included as an undesignated portion of the rent.

(5) Summer cooling component. In addition to meeting the criteria in subsections (1) and (2) [through (3)] of this section, to be eligible to receive a window air conditioner unit, an applicant shall:

- (a) Be without an adequate source of cooling; and
- (b) Have a household member who:
 - 1. Has a health condition that requires cooling to prevent further deterioration, verified by a physician's statement prepared on the physician's letterhead;
 - 2. Is sixty-five (65) years of age or older; or
 - 3. Is under the age of six (6) years.

Section 4. Benefits. (1) For a subsidy component, payment to the household's heating or cooling [fuel] provider shall be made for the full benefit amount as follows:

- (a) Benefits shall be determined prior to implementation of the component, based upon calculations from fuel usage data and from an average heating season energy cost for the six (6) primary heating fuels.
- (b) The amount of benefits shall be based upon household income and type of heating or cooling source [fuel] used.
- (c) A household with the lowest income and highest heating season fuel cost shall receive highest benefits.
- (d) Benefits shall be a percentage of the average annual heating season energy cost of the primary heating fuel.
- (e) A household living in federally assisted housing or receiving a utility allowance shall be eligible for lower benefits.

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(2) For a crisis component, benefits shall be the minimum amount necessary to alleviate a heating or cooling crisis. A household living in federally assisted housing may be eligible.

(a) A benefit may be:

1. Fuel or other energy source for heating or cooling;
2. A space heater loaned on a temporary basis until:
 - a. Fuel is delivered; or
 - b. Another resource is located to alleviate the crisis;
3. A blanket or sleeping bag; [or]
4. Emergency shelter; or
5. A window air conditioner unit.

(b) In determining the minimum amount of assistance, an agency shall take into consideration a direct subsidy for payment of utility cost received by the household from another program.

(c) A household may receive assistance more than one (1) time, but shall not receive more than the maximum allowable during each component period for the primary heating fuel or cooling source [~~minus a required copayment~~]. The maximum allowable benefit shall equal cost for delivery up to:

1. Two (2) tons of coal;
2. Two (2) cords of wood;
3. 200 gallons of propane;
4. 200 gallons of fuel oil;

Percent Of Poverty	Copayment Percentage of Benefit for Households Residing in Nonsubsidized Housing	Copayment Percentage of Benefit for Households Residing in Subsidized Housing
0-74%	0%	0%
75-100%	10%	15%
101-130%	15%	20%

(3) For cooling component benefits, a household shall be eligible for:

(a) A one (1) time subsidy [~~annual~~] payment during each component period to the household's:

1. Electric utility provider; or
2. Landlord, if the cost of cooling is included as an undesignated portion of the rent;

(b) A window air conditioner unit, if:

1. Criteria in Section 3(4)(5) of this administrative regulation are met; and
2. The agency has the funding to purchase a window air conditioner unit or has a window air conditioner unit available for the household; and

(c) Benefits based on:

1. The household's level of poverty, unless program funding is enhanced through a federal or state award or the cabinet approves an increase to the poverty income guidelines due to funding availability; and

2.a. Subsidized housing with:

- (i) Zero percent to one hundred (100) [~~seventy-four (74)~~] percent of poverty receiving up to fifty (50) dollars; or
- (ii) 101 [~~Seventy-five (75)~~] percent to 150 [~~130~~] percent of poverty receiving up to one hundred (100) [~~seventy-five (75)~~] dollars; or

2.b. Nonsubsidized housing with:

- (i) Zero to one hundred (100) [~~seventy-four (74)~~] percent of poverty receiving up to \$200 [~~175~~]; or
- (ii) 101 [~~Seventy-five (75)~~] percent to 150 [~~130~~] percent of poverty receiving up to \$150 [~~125~~].

Section 5. Benefit Delivery Methods. (1)(a) Payment under a subsidy component shall be authorized by a one (1) party check made payable to the household's:

1. Energy provider; or
2. Landlord, if the cost of heating or cooling is included as an undesignated portion of rent.

(b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider if heating or cooling services were provided by more than one (1) provider. However, the total amount of the payments shall not exceed the maximum for the primary source of heating or cooling.

(2) For a crisis component, a direct cash payment shall not

5. 200 gallons of kerosene; or

6. [a.] \$400 for natural gas or electric, [~~effective January 1, 2009; or~~

b. \$250 for natural gas or electric, ~~effective July 1, 2009,~~] unless:

a. [(i)] Program funding is enhanced through a federal or state award; or

b. [~~and (ii)~~] The cabinet approves an increase to the benefit amount due to funding availability.

(d) A household threatened with eviction whose heat or cooling costs are [is] an undesignated portion of the rent shall not receive more than the maximum allowable payment for the primary heating fuel or cooling source.]

(e) An eligible household, including a household residing in:

1. Subsidized or nonsubsidized housing, with an income at or above seventy-five (75) percent of the poverty level shall make a copayment equal to a percentage of the benefit amount needed to relieve the crisis.

2. Subsidized housing and receiving a utility allowance shall pay a higher copayment amount.

(f) The copayment amount required by paragraph (e) of this subsection shall be based on housing type and the household's percentage of poverty, as follows:

be made to the recipient. A payment shall be authorized to:

(a) An energy provider by a one (1) party check upon delivery of fuel, restoration, or continuation of service;

(b) A vendor who supplies a heater, blanket, [or] emergency lodging, or window air conditioning unit; or

(c) A landlord, if heating or cooling cost is included in the rent.[]

(3) For the cooling component, cash benefits shall be paid to a:

(a) Household's electric utility provider; or

(b) Landlord, if cooling cost is included in the rent.[]

Section 6. Right to a Fair Hearing. (1) An individual who has been denied assistance or whose application has not been acted upon in accordance with time standards established in Section 8 of this administrative regulation shall be provided an administrative review by the agency.

(2) An individual dissatisfied with the results of an administrative review may request a hearing to be held in accordance with 921 KAR 2:055.

Section 7. Vendor Selection for Nonmetered Fuel Provider. (1) Subsidy component.

(a) An agency shall solicit vendors for all nonmetered fuels and shall establish an approved vendor listing.

(b) The agency shall place an advertisement for interested vendors in a local newspaper with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.

(c) A potential vendor shall provide the agency with a fixed price in gallons for kerosene, propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.

(d) A prospective vendor shall:

1. Allow agency and authorized federal or state representatives to inspect records upon request;

2. Maintain records to financial transactions regarding LIHEAP for a period of three (3) years;

3. Inform the agency if information is received that a household has obtained a benefit by misrepresentation;

4. Provide fuel as specified and at the price quoted;

5. Comply with federal and state law pertaining to equal employment opportunity; and

6. Comply with billing procedures established by the agency.

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(e) A household shall select a vendor from the agency's approved vendor list.

(2) Crisis component.

(a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pick-up for each fuel type.

(b) Each agency shall maintain a list of approved vendors and prices throughout the crisis component.

(c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of delivery.

(d) For a household with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within:

- 1. Eighteen (18) hours for a life-threatening situation; or
- 2. Forty-eight (48) hours for an emergency situation.

Section 8. Time Standards. (1) Under a subsidy component, an eligibility determination shall be made by an agency within five (5) working days after receipt of information required by Section 2 of this administrative regulation.

(2) Under a crisis or cooling component, benefits shall be authorized so that a:

- (a) Crisis situation is resolved within forty-eight (48) hours; or
- (b) Life-threatening situation is resolved within eighteen (18) hours.

(3) Under a subsidy, crisis or cooling component, an applicant shall have five (5) working days from the date of application to provide required information to an agency as specified in Section 2 of this administrative regulation, or the application shall be denied.

Section 9. Effective Dates. (1) Implementation and termination dates for LIHEAP shall depend upon the availability of funds.

(2) If additional federal funds are made available, LIHEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation.

Section 10. Allocation of Federal Funds. (1) An amount of federal funds sufficient to provide benefits to eligible households that apply during the subsidy application period shall be reserved for a subsidy component.

(2) The balance of benefit funds for LIHEAP shall be reserved for a crisis component as follows:

(a) Benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's percentage of the statewide population at or below 130 [400] percent of the poverty level unless:

(i) Program funding is enhanced through a federal or state award; or

(ii) The cabinet approves an increase to the poverty income guidelines due to funding availability.

(b) \$400,000 of crisis benefit funds shall be identified as contingency funds and allocated to agencies based on need as approved in advance by the cabinet.

(3) \$25,000 or more shall be reserved for the Preventive Assistance Program to assist families with an energy payment not to exceed \$300 for each family if the payment:

- (a) Prevents the removal of a child from the family; or
- (b) Assists in reuniting a child with the family.

Section 11. Energy Provider Responsibilities. A provider accepting payment from LIHEAP for energy or services provided to an eligible recipient shall comply with the following provisions:

(1) Reconnection of utilities and delivery of fuel during a crisis component shall be accomplished upon certification for payment.

(2) A household shall be charged, in the normal billing process, the difference between actual cost of the home energy and amount of payment made through this program.

(3) A LIHEAP recipient shall be treated the same as a household not receiving benefits.

(4) The household on whose behalf benefits are paid shall

not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of a recipient household due to receipt of a LIHEAP payment.

Section 12. Annual Plan. A copy of the state's annual Low Income Home Energy Assistance Program state plan prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87 may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

ERIC C. FRIEDLANDER, Secretary

APPROVED: May 27 2020

FILED BY AGENCY: May 28, 2020 at 11 a.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and benefits criteria for the Low Income Home Energy Assistance Program (LIHEAP) in Kentucky.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the eligibility and benefits criteria for Kentucky's LIHEAP program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. The cabinet has responsibility under 42 U.S.C. 8621 to implement the LIHEAP program.

(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 eligibility and benefits criteria for the implementation of LIHEAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by increasing the eligibility income limit for services provided with Low Income Home Energy Assistance Program (LIHEAP) Block Grant funds when additional funding is available. The amendment also includes cooling benefits where only heating benefits were provided previously. The emergency version of this amendment is necessary in order to immediately utilize federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding as the Act authorizes states to raise the eligibility income limit for LIHEAP services furnished during fiscal years 2020 and 2021, including services furnished with the state's regular LIHEAP appropriations during those years. The increase in eligibility and services available that assist in paying for heating and cooling are especially needed for households that may be dealing with economic hardships due to the COVID-19 pandemic and resulting loss of employment. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)2. and 4., as federal funding will be lost if not used as soon as possible, and the expansion of program eligibility and services will protect human health and welfare through providing assistance in paying for summer cooling and winter heating utilities to those meeting the eligibility requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding in providing services for more eligible LIHEAP applicants.

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The CARES Act authorizes an increase in the eligibility income limit for this program in fiscal years 2020 and 2021 and the cabinet intends to use leftover LIHEAP funds for future years, if available.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for program eligibility and compliance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of the LIHEAP program in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet holds a master agreement with Community Action Kentucky (CAK), which subcontracts with twenty-two community action agencies and one local government to provide LIHEAP benefits throughout Kentucky's 120 counties. In SFY 2019, Kentucky served approximately 156,694 households through LIHEAP. Approximately 78,306 households were served under the LIHEAP subsidy component and 78,388 were served under the LIHEAP crisis component.

(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 increases the eligibility income limit for LIHEAP services; therefore, allowing the provision of more home energy assistance through the utilization of federal CARES Act dollars. The amendment also expands the program to allow assistance in paying summer cooling utilities where only winter heating assistance was provided previously. The increase in eligibility and services are especially needed in households that may be dealing with economic hardships due to the COVID-19 pandemic and resulting loss of employment. No additional actions are required by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs associated with providing LIHEAP services will be absorbed within the sub-award of the federal LIHEAP Block Grant. There is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The eligibility income limit for programs and services provided through LIHEAP Block Grant funding is increased through this amendment, additional cooling services are provided, and additional funding is being provided through the CARES Act; therefore, there should be an increase in the provision of programs and services for eligible households.

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

(a) Initially: The U.S. Department of Health and Human Services allocates LIHEAP funding annually to states. No general funds are used in the implementation of this regulation as LIHEAP is funded 100% by federal funds. CARES Act funding for this program is \$13,745,001.00.

(b) On a continuing basis: The cabinet will ensure that the programs and state administrative activities funded under the LIHEAP Block Grant are within federal appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is 100% federally funded. No general funds are used in funding LIHEAP. The source of these funds is the LIHEAP Block Grant and CARES Act funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation. The cabinet will implement and enforce this administrative regulation in subsequent years within federal appropriations for LIHEAP.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly

establish or increase fees.

(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. 42 U.S.C. 8621

2. State compliance standards. KRS 45.357, 194A.010, KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 8621

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter requirements than those required by the federal mandate. However, the current administrative regulation in place imposes additional responsibilities and requirements than those required by federal mandate. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with state law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional reporting requirements are necessary in order to comply with KRS 45.357. The imposition of the additional requirements and responsibilities is necessary to ensure compliance with applicable state laws.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation. The cabinet holds a master agreement with Community Action Kentucky (CAK), which subcontracts with twenty-two community action agencies and one local government to provide LIHEAP benefits throughout Kentucky's 120 counties.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45.357, 194A.010, 194A.050(1), 194A.060, 194A.070, 45 C.F.R. Part 96 Subpart H, 42 U.S.C. 8621-8627, 42 U.S.C. 9902(2)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet will utilize the administrative funds available under the LIHEAP Block Grant to administer these programs in the first year. Costs will be within available appropriations.

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the administrative funds under the LIHEAP Block Grant to administer these programs in subsequent years. Costs will be within available appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY
922 KAR 2:400E**

This emergency administrative regulation is necessary in order to ensure that licensed child care centers and certified family child care homes are operating under Centers for Disease Control and Prevention and public health guidelines to prevent the spread of the Novel Coronavirus Disease (COVID-19) as agencies reopen in the midst of the pandemic. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. and 4., as the administrative regulation is necessary in order to address imminent threats to public health, safety, and welfare as child care agencies are reopened in the midst of the COVID-19 pandemic and necessary in order to protect human health and welfare. Child care agencies are permitted to reopen in June 2020, and this emergency administrative regulation is needed immediately to ensure public health standards are implemented in agencies choosing to reopen. This emergency administrative regulation will not be replaced by an ordinary administrative regulation as these additional health and safety standards are in direct response to the declared public health emergency caused by COVID-19 and are deemed to be temporary.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(New Emergency Administrative Regulation)**

922 KAR 2:400E. Enhanced requirements for certified and licensed child care as a result of a declared state of emergency.

EFFECTIVE: June 8, 2020

RELATES TO: KRS. 13A.190, 194A.050(1), 199.011(4), 199.894(5), 199.896(2), 45 C.F.R. 98.43(a)(2)(i)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.8982(1)(f)

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) and KRS 199.8982(1)(f) authorize the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child care centers and family child care homes. This administrative regulation establishes additional health and safety standards for certified family child care homes and licensed child care centers due to the COVID-19 pandemic and declared state of emergency to prevent the spread of disease in child caring homes and facilities.

Section 1. Definitions.

- (1) "Child" is defined by KRS 199.011(4).
- (2) "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.
- (3) "Child care center" is defined by KRS 199.894(3).
- (4) "Child care provider" is defined by 45 C.F.R. 98.43(a)(2)(i).
- (5) "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 2:120, 922 KAR 2:280, and this administrative regulation; and
 - (c) Who is responsible for directing the program and managing the staff at a child care center.
- (6) "Family child care home" is defined by KRS 199.894(5).
- (7) "School-age" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten,

elementary, or secondary education.

Section 2. Reopening Protocol.

- (1) The Commonwealth of Kentucky shall reopen;
 - (a) Family child care homes on Monday, June 8, 2020;
 - (b) All other child care centers on Monday, June 15, 2020;and
 - (c) If a child care provider chooses to delay opening, the provider shall communicate this to the Division of Regulated Child Care.
- (2) When a child care provider reopens:
 - (a) The director shall update the staff roster in the Kentucky National Background Check Program pursuant to 922 KAR 2:280 and the cabinet-designated database maintained pursuant to 922 KAR 2:240 to confirm all staffing records are current for inspection purposes; and
 - (b) If there is a new director, the program shall contact the Division of Regulated Child Care immediately to file director change paperwork in accordance with 922 KAR 2:090.

Section 3. Social Distancing Requirements for Child Care Programs.

- (1) A child care center shall have a maximum group size of ten (10) children per group.
- (2) A certified family child care home shall have the maximum group size established in 922 KAR 2:100.
- (3) Each child shall remain in the same group of ten (10) throughout the day without interacting with another group.
- (4) For an operating child care center, the staff-to-child ratio for children under the age of twenty-four (24) months shall remain the same as established in 922 KAR 2:120.
- (5) A child care provider may use a temporary wall to divide classroom space in order to comply with the maximum group size of ten (10) children requirement established in subsection (1) of this section. A temporary wall:
 - (a) Shall be at least six (6) feet tall;
 - (b) Shall be stable;
 - (c) Shall not be classroom furniture rearranged to divide classroom space;
 - (d) Shall not divide classroom space in a manner that results in less than thirty-five (35) square feet of space per child;
 - (e) Shall not create a traffic pattern that would cause noncompliance with health and safety requirements during a medical state of emergency;
 - (f) May create a classroom that does not have its own bathroom, as long as the classroom still has access to a bathroom.
- (6) Individuals approved to be inside the child care center or family child care home shall include:
 - (a) Facility staff;
 - (b) A person with legal authority to enter the facility, including cabinet staff and first responders;
 - (c) A necessary utility worker;
 - (d) A professional providing medical or therapeutic services for children with special needs;
 - (e) A child enrolled in the facility;
 - (f) A parent or legal guardian of a child enrolled in the program; and
 - (g) A family member who lives in the home of a family child care home.
- (7) A child care provider shall:
 - (a) Reduce the number of staff each classroom of children interact with each day;
 - (b) Create a schedule in which the same staff work with the same children each day as able;
 - (c) Stagger playground time between classroom groups so as to separate one group of children from another;
 - (d) Utilize a centralized drop-off and pick-up location to eliminate unnecessary traffic of parents and guardians to the classrooms;
 - (e) Require parents and guardians exercise social distancing of no less than six (6) feet during drop-off and pick-up; and
 - (f) Modify traffic flow to minimize contact between children and staff to the greatest extent possible.

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- (8) A child care provider may:
- (a) Use virtual classroom observations for practicum students; and
 - (b) Use virtual tours for prospective families, with permission of the families whose children may appear in the video.
- (9) A child care provider shall not:
- (a) Provide access to visitors or students conducting classroom observations;
 - (b) Hold center-wide family events;
 - (c) Permit field trips;
 - (d) Allow high-contact sports on the playground;
 - (e) Utilize family style dining at this time. Staff members shall prepare plates and pass them out to individual children;
 - (f) Offer transportation to children upon reopening. When the public school system resumes classes, child care providers may model their transportation policy from the Kentucky Department of Education's recommendation to the public school system; and
 - (g) Permit staff to congregate in common areas and shall require they observe social distancing policies whenever possible.

Section 4. Business Practices.

- (1) To the greatest extent possible, a child care provider shall:
- (a) Conduct business practices by telephone or internet;
 - (b) Use digital documents instead of paper documents;
 - (c) Communicate with parents and vendors by telephone and digital communication;
 - (d) Utilize digital billing and invoices; and
 - (e) Discourage employees from sharing phones, computers, and office supplies if duplicate materials are available.

Section 5. Cleaning and Sanitizing Requirements for Child Care Providers. (1) A child care provider shall:

- (a) Utilize the cleaning and sanitizing procedures outlined in the cabinet-approved orientation training that is required by 922 KAR 2:090 and 922 KAR 2:100;
 - (b) Create and post a cleaning and sanitizing plan specific to the individual child care center or family child care home and outline the additional cleaning and sanitizing requirements from the Centers for Disease Control and Prevention for child care during a pandemic;
 - (c) Eliminate "lost and found" bins; and
 - (d) Prohibit the use of communal water fountains.
- (2) Toys children have placed in their mouths or that have been contaminated by other bodily fluids shall be set aside in a separate container for soiled toys until they are cleaned and sanitized by a person wearing gloves.
- (3) Machine washable toys shall not be used.
- (4) Groups of infants and toddlers shall not use shared toys unless they are cleaned and sanitized before being shared between children.

- (5) Bedding (blankets, sheets, pillows, sleeping bags) shall be:

- (a) Able to be washed;
 - (b) Separated and stored in individual labeled bins without touching another child's bedding; and
 - (c) Washed, at least at the end of each week.
- (6) Children and staff shall:

- (a) Meet the handwashing requirements established in 922 KAR 2:100, Section 13(4) and (5), in a certified family child care home and 922 KAR 2:120, Section 3(4) and (5), in a licensed child care center, respectively; and
- (b) Wash their hands with liquid soap and warm running water or utilize hand sanitizer or hand-sanitizing wipes prior to center or home departure.

- (7) The child care center or family child care home shall provide liquid soap, hand-sanitizer (as appropriate), handwashing programs, tissues, and wastebaskets in convenient locations.

Section 6. Screening and Illness Requirements.

- (1) Children and adults shall be screened for fever and contagious symptoms upon entry into the child care center or family child care home each day and shall not be allowed to enter if displaying a contagious fever or symptom of COVID-19.

- (2) A contagious fever shall be considered a fever of 100.4 degrees Fahrenheit or higher in accordance with

recommendations from the Centers for Disease Control and Prevention.

- (3) Staff who demonstrate symptoms of COVID-19 shall be tested for the illness.

- (4) A child or adult who tests positive for COVID-19 shall follow the recommendations of the local health department on when to return to child care.

- (5) A child care provider shall follow the recommendations of the local health department on whether the program must temporarily close due to an outbreak of COVID-19.

- (6) If a child demonstrates a fever or other contagious symptom, the child shall be removed from the classroom setting immediately and placed in a safe, low-traffic area until the parent or guardian arrives to pick up the child. The provider shall require the parent or guardian to pick up the child within one hour of being contacted.

- (7) A child care provider shall notify enrolled families and staff when a diagnosed case of COVID-19 is identified in the center or home, while still protecting the privacy of the individual who was diagnosed.

Section 7. Personal Protective Equipment (PPE) Requirements.

- (1) Each adult, including parents and guardians at drop-off and pick-up, shall wear a face mask while inside a child care center or family child care home:

- (a) Unless doing so would represent a serious risk to their health or safety and they are able to present a medical statement stating this;

- (b) Except during planned staff breaks and lunch away from children in care and other staff; and

- (c) Except for staff working with infant or toddler groups who choose to wear a face shield instead.

- (2) A provider shall make masks available to parents, guardians, and other adults permitted into the facility.

- (3) If an adult refuses to wear a mask, or face shield as permitted by subsection (1)(c) of this section, the facility may refuse those individuals the right to enter the facility. A provider shall establish a policy as to whether a parent or guardian is allowed to enter the facility if an adult refuses to adhere to the facility's policies regarding the guidelines of the Centers for Disease Control and Prevention.

- (4) A child who is five (5) years of age or younger shall not wear a face mask due to increased risk of suffocation and strangulation. School-age children may wear a face mask if temperament and developmental ability permits.

- (5) Staff shall wear gloves when preparing meals and serving bottles. Gloves shall be changed between bottle feedings.

- (6) A provider shall ensure that gloves are available to staff engaging in high-touch activities to the greatest extent practicable, provided that wearing gloves does not create additional health hazards for that activity.

- (7) A provider shall have at least a one week supply of the required cleaning supplies and PPE on-site prior to reopening the child care center or family child care home. Child Care Aware staff members shall screen facilities to ensure supplies are on-site prior to opening.

Section 8. Training Requirements.

- (1) All child care staff, directors, owners, and operators shall complete a new, mandatory training on cleaning, sanitizing, health procedures, and mandatory reporting prior to the date of reopening. The new training shall be available on June 1, 2020, and shall be a free, online course.

- (2) All new staff hired shall take the mandatory training on cleaning, sanitizing, health procedures, and mandatory reporting within ninety (90) days of their hire date.

- (3) A child care provider shall not be penalized if staff did not complete the training hours required by 922 KAR 2:090 or 922 KAR 2:100 during the child care closure.

Section 9. Safety and Background Check Requirements.

- (1) Staff with expired tuberculosis skin tests and newly hired staff shall be given an extension not to exceed 120 days after the

date established for reopening to be tested.

(2) Annual visits from the Division of Regulated Child Care shall begin after child care centers and family child care homes reopen.

(3) New background checks for staff who were employed at the time of the child care closure on Friday, March 20, 2020, shall not be required due to the rapback feature of the Kentucky National Background Check Program.

(4) Staff with a completed fingerprint-based background check via the Kentucky National Background Check Program shall return to the classroom and may be left alone with children in accordance with 922 KAR 2:280.

(5) New staff shall undergo name-based background checks in accordance with 922 KAR 2:280 and shall not be left alone with children until fingerprint-based background checks are able to be conducted.

(6) A provider shall ensure staff are informed that they may identify and communicate potential improvements or concerns in order to reduce potential risk of virus exposure in the workplace.

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 4, 2020

FILED WITH LRC: June 8, 2020 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 24, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does:

Kentucky Governor Andy Beshear announced on March 16, 2020, that all child care centers would close by the end of business on March 20, 2020, due to the declared state of emergency caused by the COVID-19 pandemic. On May 21, 2020, Governor Beshear announced that a portion of childcare centers will be allowed to reopen on June 8, 2020, with the rest being allowed to reopen on June 15, 2020, with certain health and safety requirements in place to prevent the spread of COVID-19 within facilities and homes.

This administrative regulation contains requirements to ensure the health and safety of staff and families in child care centers and family child care homes who choose to reopen during the COVID-19 pandemic.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to address imminent threats to public health, safety, and welfare as child care agencies are reopened in the midst of the COVID-19 pandemic. Child care agencies are permitted to reopen in June 2020, and this emergency administrative regulation is needed immediately to ensure public health standards are implemented in agencies choosing to reopen.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing health and safety standards for licensed child care centers and certified family child care homes. These additional health and safety standards are necessary to prevent the spread of the COVID-19 virus in child care facilities and homes.

(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 health and safety standards for child care centers and family child care homes.

(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, temporary administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new, temporary administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new, temporary administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new, temporary administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 2020, there were 1,910 licensed child care centers and 234 certified family child care homes in Kentucky. The Department for Community Based Services, Division of Child Care, and the Office of the Inspector General, Division of Regulated Child Care, will be impacted as the child care regulating and monitoring agencies, respectively.

(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: Certified family child care homes and licensed child care centers who choose to reopen during the COVID-19 pandemic will be required to meet the additional health and safety requirements contained in this administrative regulation to prevent the spread of the virus within child care facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the Division of Child Care or the Division of Regulated Child Care, but the limit of ten children per classroom group will be an expense to licensed child care centers. This requirement is consistent with the recommended group size established in Centers for Disease Control and Prevention (CDC) guidance at this time. This administrative regulation allows for the establishment of temporary walls to ensure groups are separated in a manner that complies with this administrative regulation. Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding has been distributed to cover the cost of fixed expenditures during the closure and to assist with the purchase of personal protective equipment and cleaning supplies needed for reopening.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities complying with the requirements of this administrative regulation will reduce the risk of spreading the COVID-19 virus within their facilities and homes, consistent with CDC guidelines.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any ongoing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the implementation of this administrative regulation. Federal CARES Act funding was secured and has been distributed to child care providers to cover the cost of fixed expenditures during the closure and to assist with the purchase of personal protective equipment and cleaning supplies needed for reopening.

(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 as a result of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased 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 as all licensed child care centers and certified family child care homes who choose to open during the COVID-19 pandemic will be regulated by this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 9857-9858q

2. State compliance standards. KRS 194A.050(1), 199.896(2), 199.8982(1)(f)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 9857-9858q contains requirements for the administrative body receiving Child Care and Development Block Grant funds and gives states the maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the state.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation is more stringent than federal mandates as it contains temporary health and safety requirements for child care agencies reopening during the COVID-19 pandemic, consistent with CDC guidelines. The federal rule does give states flexibility in setting standards specific to state needs.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation contains different requirements than federal requirements due to the declared state of emergency and nature of the COVID-19 virus.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services (Division of Child Care and Division of Regulated Child Care) is impacted by this administrative regulation. A local government or a school district reopening a licensed child care center, in whole or in part, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 9857-9858q, KRS 194A.050(1), 199.896(2), 199.8982(1)(f)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue.

(c) How much will it cost to administer this program for the first

year? There will be no additional costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
922 KAR 6:010E

This emergency administrative regulation is necessary in order to immediately utilize federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to expand eligibility for services and programs funded by the Community Services Block Grant. The CARES Act authorizes states to raise the eligibility income limit for CSBG services furnished during fiscal years 2020 and 2021, including services furnished with the state's regular CSBG appropriations during those years. This amendment also gives the cabinet the authority to waive the required local matching funds for supplemental state or federal funding. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)2. and 4., as federal funding will be lost if not used as soon as possible, and the expansion of program eligibility will protect human health and welfare through the provision of community services to low-income populations in Kentucky. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

922 KAR 6:010E. Standards for community action agencies.

EFFECTIVE: May 28, 2020

RELATES TO: KRS 45.357, 45A.455, 61.800-61.850, 61.870-884, 194A.060, 273.405-273.453, Chapter 344, 45 C.F.R. 96, 42 U.S.C. 9901-9926

STATUTORY AUTHORITY: KRS 194A.050(1), 273.448(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 273.448(1)(a) requires the state administering agency to establish in accordance with applicable state and federal laws and regulations, standards for community action agencies by which the administrative, fiscal and programmatic effectiveness of the federal act shall be measured. This administrative regulation establishes the requirements for the operation and oversight of the community action agencies relative to the community services block grant funding, intended to provide services for residents meeting poverty income guidelines issued by the U.S. Department of Health and Human Services. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with KRS 45.357, and the Kentucky Civil Rights Laws, KRS Chapter 344, are more inclusive than those required under 42 U.S.C. 9918(c)(1). The imposition of additional requirements and responsibilities is to ensure necessary compliance with applicable state laws.

VOLUME 47, NUMBER 1– JULY 1, 2020

Section 1. Definitions. (1) "Commissioner" means the Commissioner for the Department for Community Based Services, Cabinet for Health and Family Services.

(2) "Community action agency" is defined by KRS 273.410(2).

(3) "Community action board" means the board of directors of a community action agency that [which] is a political subdivision.

(4) "Community Services Block Grant" or "CSBG" means Community Services Block Grant funds made available by 42 U.S.C. 9901-9926.

(5) "Designating official" means the chief elected official of the eligible political subdivision or subdivisions if the political subdivision is a community action agency.

(6) "Governing board" means the board of directors of a private nonprofit community action agency.

(7) "Public community action agency" means a community action agency that is established as a division of local government.

Section 2. Board of Directors. (1) Each community action agency shall establish and maintain a board of directors in accordance with KRS 273.437 and 273.439.

(2) Governing boards and community action boards shall adopt written bylaws. The bylaws shall include:

- (a) The purpose of a community action agency;
- (b) Duties and responsibilities of the board;
- (c) Number of members on the board;
- (d) Qualifications for a board membership;
- (e) The types of membership;
- (f) The method of selecting a member;
- (g) Terms of a member;
- (h) Officers and duties;
- (i) Method of electing an officer and chairperson;
- (j) A standing committee, if applicable;
- (k) Provision for approval of programs and budgets;
- (l) The frequency of board meetings and attendance requirements; and

(m) Provision for official record of meetings and action taken.

(3) The boards and designating officials:

(a) May delegate the responsibility to carry out a program of a community action agency and fiscal requirements to an executive director; and

(b) Shall not delegate final approval, responsibility, accountability, or direction of policy, except for a public community action agency.

Section 3. Board Meetings. (1) A board meeting shall be open to the public in accordance with KRS 61.800-61.850.

(2) A simple majority shall constitute a quorum for a board meeting.

(3)(a) A meeting of a governing board or a community action board shall be recorded.

(b) Minutes shall be made of the meeting.

(c) The minutes shall include:

- 1. Date, time, and place of meeting;
- 2. Names of members attending;
- 3. Topics discussed, problems, recommendations made or presented, and a plan for change and improvements;
- 4. Decisions reached and actions taken;
- 5. An executive director's report and other reports as are presented; and
- 6. Recommendations made by the community action board to designating officials of the eligible political subdivision.

(d) The minutes shall be:

1. Approved by the board of directors and signed by the appropriate officer; and

2. Copied and distributed to each board member, the executive director, and the department within thirty (30) days of the minutes' approval in accordance with subparagraph 1 of this paragraph.

Section 4. Administration. (1) A community action agency shall meet the federal assurances and reporting requirements in accordance with 42 U.S.C. 9901-9926 and 45 C.F.R. 96.

(2) A community action agency shall adopt the organizational standards for eligible entities pursuant to the Community Services

Block Grant Information Memorandum, Transmittal No. 138 from the U.S. Department of Health and Human Services, dated January 26, 2015.

(3) A community action agency in accordance with KRS 273.441 and 273.443, and with the knowledge and concurrence of appropriate officials and boards as required in KRS 273.437 and 273.439, shall:

(a) Submit necessary reports, records, or other information to:

1. Determine fiscal, administrative, and programmatic effectiveness in utilization of CSBG funds; and

2. Fulfill requirements of KRS 45.357;

(b) Except for a public community action agency, develop written personnel policies including:

1. A job classification plan with the provision of a systematic arrangement of job positions in the agency indicating title, related duties, and responsibilities for each position. For those positions that [which] are sufficiently similar as to the duties performed and to the scope of responsibility, equal pay ranges shall be:

a. Allocated to the same job classification; and

b. Reviewed at least every four (4) years;

2. A job specification for each job classification, including required education, experience, training, skills and other qualifications required that [which] shall be reviewed at least every four (4) years;

3. A compensation plan with the provision of a pay plan for community action agency employees outlining pay grades or salary rates, salary adjustments, salary advancements, and overtime adjustments as appropriate for the job classifications. Rates of pay shall be:

a. Consistent with the functions outlined in the job classification plan; and

b. Reviewed at least every four (4) years;

4. Attendance and leave policies that shall:

a. Be reviewed at least every four (4) years; and

b. Include the accumulation and credit of:

(i) Annual leave;

(ii) Sick leave;

(iii) Compensatory or overtime leave;

(iv) Military leave;

(v) Leave related to the birth or adoption of a child;

(vi) Court leave;

(vii) Voting leave;

(viii) Absence without leave; and

(ix) Other conditions of specific leave;

5. A fringe benefit plan that shall:

a. Be reviewed every four (4) years; and

b. Include the coverage and conditions of those items provided by the community action agency, such as:

(i) Basic salary or wage rates including hospitalization insurance;

(ii) Dental insurance;

(iii) Holidays;

(iv) Disability leave;

(v) Personal leave;

(vi) Retirement or pension; and

(vii) Deferred compensation;

6. An affirmative action plan with a policy statement that the community action agency's intention is to give equal opportunity in hiring, advancement opportunities, and in work assignments in accordance with KRS Chapter 344;

7. A personnel grievance procedure that shall:

a. Include a plan for resolving employee grievances and complaints; and

b. Describe the method that the community action agency follows if an employee is dissatisfied with some aspect of the employee's working conditions. The procedure shall outline:

(i) How the employee files a complaint;

(ii) Who reviews the complaint;

(iii) Who hears the complaint;

(iv) Who may attend a hearing;

(v) Length of time for the hearing decision; and

(vi) The next level of appeal, if the employee is still dissatisfied with the hearing results; and

8. Hiring and firing practices, with a plan for:

- a. Hiring an employee;
- b. Promotions;
- c. Demotions;
- d. Job postings and advertisements;
- e. Resignations;
- f. Layoff procedures;
- g. Disciplinary actions; and
- h. Dismissal procedures;

(c) Make available a copy of the community action agency's personnel policies to staff;

(d) Ensure that there is no discrimination against an applicant or recipient of CSBG services in accordance with KRS 344.015(2), 344.020, and 42 U.S.C. 9918(c)(1);

(e) Be responsible for compliance with conditions of contracts and grants, appropriate state and federal laws, administrative regulations, and cost principles;

(f) Indemnify the cabinet against a claim, including attorney fees and other costs of litigation that [which] may result from damage caused by the community action agency's employee, negligent acts, or omissions of the community action agency's agent, employee, or subcontractor;

(g) Ensure that a notice, information pamphlet, research report, and similar public notice prepared and released by the community action agency pursuant to its contract for CSBG funds shall include the statement: "This project is funded, in part, under a contract with the Cabinet for Health and Family Services with funds from the Community Services Block Grant Act of the U.S. Department of Health and Human Services"; and

(h) Ensure that no employee or representative of the community action agency with procurement authority shall participate either directly or indirectly in an activity that is in conflict with the provisions of KRS 45A.455 and 42 U.S.C. 9918.

(4)(a) Except for a public community action agency, a community action agency with the knowledge and concurrence of appropriate officials and boards, shall:

- 1. Develop written fiscal policies and a manual; and
- 2. Review and update the policies and the manual at least annually.

(b) Fiscal records shall be maintained in accordance with generally acceptable accounting procedures and practices and in conformity with 42 U.S.C. 9916(a).

(c) A current written financial report shall be presented to a board of directors:

- 1. At least quarterly; or
- 2. More frequently, if requested by the board or the cabinet.

(5)(a) A community action agency shall:

- 1. Develop written programmatic operation policies and a manual; and
- 2. Review and update the policies and the manual at least annually.

(b) A community action agency's program manual, which may be characterized as an operations manual, shall include:

- 1. Criteria for determining eligibility of an individual for CSBG programs;
- 2. The intake process including information needed to approve an applicant;
- 3. Procedures for accepting a referral from another agency;
- 4. Instructions for records to be kept on applicants, clients, and statistical data on intake;
- 5. Procedures for reports to be made to the cabinet and frequency;
- 6. Procedures to be followed if an applicant is found ineligible;
- 7. Complaint procedures;
- 8. A description of each program's organizational structure, major lines of authority, and areas of responsibility within the CSBG programs; and
- 9. Procedures for documenting the extent of participation of individuals who are low income in the community action agency's CSBG programs.

(6)(a) A community action agency shall ensure that a client dissatisfied with services rendered under a CSBG contract shall be provided an opportunity to file a formal complaint and to be heard at the local level.

(b) A client may attempt to resolve the issue by submitting a

written complaint to the community action agency within thirty (30) calendar days after the date of the community action agency's action or alleged act.

(c) The community action agency shall provide the client a written response to the complaint within thirty (30) calendar days of receipt of the client's complaint in accordance with paragraph (b) of this subsection.

(d) If extenuating circumstances concerning the client's case prolong review of the complaint, the executive director of the community action agency may grant an extension to the response timeframe given in paragraph (c) of this subsection.

(e)1. A client dissatisfied with a final written decision rendered by the community action agency in response to a complaint may request that the commissioner review the complaint and the community action agency's response.

2. A request for review shall be submitted to the commissioner within ten (10) days of the receipt of the community action agency's response.

3. Upon completion of the review, the commissioner or designee shall render a written order regarding the complaint within thirty (30) days unless:

a. Extenuating circumstances prolong the review of the complaint; and

b. The commissioner or designee notifies the client of the need for an extension to the timeframe specified in this subparagraph.

4. The community action agency shall abide by the order.

(f) The complaint and hearing procedures shall be posted in each agency office.

(7) A community action agency shall ensure the design, implementation, and documentation of in-service training program for staff. Additional training shall also be documented for staff.

Section 5. Income Eligibility, Validation, and Determination.

(1) To be eligible to participate in services and programs funded with CSBG funds, an individual's or family's income shall be at or below 125 percent of the current poverty level issued each year by the United States Department of Health and Human Services and published in the Federal Register, unless:

(a) Program funding is enhanced through a federal or state award; or

(b) The cabinet approves an increase to the poverty income eligibility guidelines due to funding availability.

(2) Information and referral services shall be provided to an individual or family without regard to income.

(3) If screening for programs where the eligibility factor is higher, the factor for that other program applies.

(4) The individual or family head shall sign a document attesting to the amount of declared income and eligibility to receive services.

(5) A community action agency or its worker shall require that a client produce proof of income eligibility in which a dated copy of the client's documentation shall be placed in the client's file.

(6) Initial eligibility shall be:

(a) Determined within thirty (30) days of application;

(b) Redetermined if there is a change in circumstance; and

(c) Redetermined at least annually, if there is not a change in circumstance.

Section 6. Maintenance of Case Records. (1) A log shall be maintained by a community action agency on a referral made by an outside agency or individual including:

(a) Date of referral;

(b) A referring agent; and

(c) Reason for referral and disposition.

(2) A CSBG case record shall be maintained on each applicant accepted for a service or benefit.

(a) The record shall include:

1. Intake information as follows:

a. Name, address, and telephone number of the applicant;

b. Birthdate;

c. Sex;

d. Race or ethnic origin;

e. Proof of income;

- f. Level of education completed;
 - g. A presenting problem;
 - h. Date of presenting problem;
 - i. Staff member gathering information;
 - j. Referral agent, if applicable;
 - k. Approval or disapproval for services or benefits and date;
- and

- l. The signature of the person making the determination or the referral;
 - 2. Client progress toward a documented goal during a service or benefit period;
 - 3. Chronological recording of supervisory and staff contacts with a client during the service or benefit period;
 - 4. Copies of correspondence and other pertinent information;
 - 5. Redetermination of eligibility, if required by Section 5(6) of this administrative regulation; and
 - 6. Information regarding any termination of services and benefits.
- (b) A community action agency shall ensure that a client case record is maintained in conformity with existing laws pertaining to confidentiality in accordance with KRS 194A.060.
- (c) The records shall be maintained in a location that [which] is secure and convenient to service delivery staff.
- (3) A community action agency shall ensure development and implementation of a written client case record retention and disposal schedule.
- (4) A public community action agency or any program or subdivision of a community action agency meeting the definition of a public agency as defined in KRS 61.870(1) shall comply with the open records law, KRS 61.870-61.884.

Section 7. Monitoring and Evaluation Reports. A community action agency in accordance with 42 U.S.C. 9914, Community Services Block Grant Information Memorandum, Transmittal No. 138 from the U.S. Department of Health and Human Services, KRS 273.441, 273.443, and 273.448(1), and with the knowledge and concurrence of appropriate officials and boards as required in KRS 273.437 and 273.439, shall meet the following:

- (1) Ensure the development of a data collection and recordkeeping system that allows for administrative, programmatic, and fiscal monitoring and evaluation;
- (2) Ensure the design and implementation of program reviews and studies to determine under or over utilization of each program, and progress towards goals and objectives; and
- (3) Permit monitoring, review, and evaluation of the total community action agency operation by the department or its designee.

Section 8. Matching Requirement. (1) A contractor receiving CSBG funds pursuant to 922 KAR 6:045 [~~3:040~~] shall provide a twenty (20) percent local match in accordance with KRS 273.446(3).

(2) The cabinet may waive the local match required by subsection (1) of this section if additional state or federal funds are provided.

Section 9. CSBG Program State Plan. A copy of the state's CSBG program plan may be obtained by submitting a written request to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 10. Incorporation by Reference. (1) "Community Services Block Grant Information Memorandum, Transmittal No. 138 from the U.S. Department of Health and Human Services", January 26, 2015, 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.

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 27, 2020

FILED WITH LRC: May 28, 2020 at 11 a.m.

CONTACT PERSON: Donna Little, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the operation and oversight of Kentucky's community action agencies providing services for residents meeting poverty income guidelines issued by the U.S. Department of Health and Human Services in accordance with the Community Services Block Grant.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for community action agencies and qualify for the receipt of federal funds under the Community Services Block Grant.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes, which require the state administrating agency to establish standards for community action agencies.

(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 standards for the operation and oversight of the community action agencies under the Community Services Block Grant.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by increasing the eligibility income limit for programs and services provided through Community Services Block Grant funding. The emergency version of this amendment is necessary in order to immediately utilize federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding as the Act authorizes states to raise the eligibility income limit for CSBG services furnished during fiscal years 2020 and 2021, including services furnished with the state's regular CSBG appropriations during those years. Each community action agency determines the most appropriate use of the funds based on the needs identified in their area, but programs and services frequently include nutrition assistance, providing personal care items, assisting with rent or utility emergency payments, providing employment services and referrals, assisting substance abuse programs and domestic violence shelters, and more. The increase in eligibility and funding are especially needed in low-income populations that may be dealing with economic hardships due to the COVID-19 pandemic and resulting loss of employment. The amendment also gives the cabinet the authority to waive the required local matching funds for supplemental state or federal funding as community action agencies may not be able to match the funds due to decreased donations and economic hardship during the COVID-19 pandemic. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)2. and 4., as federal funding will be lost if not used as soon as possible, and the expansion of program eligibility will protect human health through the provision of community services to low-income populations in Kentucky.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding in providing services and programs to low-income populations in Kentucky. The CARES Act authorizes an increase in the eligibility income limit for these programs and services in fiscal years 2020 and 2021.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for community action agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of community services and programs in low-income populations in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet contracts with twenty-three community action agencies that serve all 120 Kentucky counties to provide community services and programs to low-income populations in Kentucky. This currently includes twenty-two non-profit entities and one public entity. In fiscal year 2018, CSBG funds were used to serve 307,668 low-income individuals (152,273 households).

(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 increases the eligibility income limit for programs and services provided through Community Service Block Grant funding; therefore, allowing the provision of more programs and services through the utilization of federal CARES Act dollars. The increase in eligibility and funding are especially needed in low-income populations that may be dealing with economic hardships due to the COVID-19 pandemic and resulting loss of employment. The amendment also gives the cabinet the authority to waive the required local matching funds for supplemental state or federal funding so the entities identified above will not always be required to provide a local match.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs associated with providing community services and programs will be absorbed within the sub-award of the federal Community Services Block Grant to the regulated entities. The amendment waives the requirement to provide a local match in some instances. There is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The eligibility income limit for programs and services provided through Community Services Block Grant funding is increased through this amendment and additional funding is being provided through the CARES Act; therefore, there should be an increase in the provision of programs and services in low-income populations. The amendment also waives the local match required from contract entities in some scenarios.

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

(a) Initially: The cabinet will utilize the available administrative funds under the Community Services Block Grant to implement this amendment. The additional funding for this program provided by the CARES Act is \$16,857,000.

(b) On a continuing basis: The cabinet, in partnership with Kentucky's Community Action Network, will ensure that the programs and state administrative activities funded under the Community Services Block Grant are within federal appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds provided by the Community Services Block Grant and state general funds for community action agencies' audits are used for the implementation and enforcement of this administrative regulation. Federal CARES funding will be used to provide additional community services and programs in 2020 and 2021.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased 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 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. 96, 42 U.S.C. 9901-9926

2. State compliance standards. KRS 45.357, 194A.050(1), 273.405-273.453, Chapter 344

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 96, 42 U.S.C. 9901-9926

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter requirements than those required by the federal mandate. However, the current administrative regulation in place imposes additional responsibilities and requirements than those required by federal mandate. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with state law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional reporting requirements are necessary in order to comply with KRS 45.357. The Kentucky Civil Rights Laws, KRS Chapter 344, are more inclusive than those required under 42 U.S.C. 9918(c)(1). The imposition of the additional requirements and responsibilities is necessary to ensure compliance with applicable state laws.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, and one public and 22 quasi-governmental non-profit entities in Kentucky's Community Action Network will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45.357, 45A.455, 61.870-884, 194A.050(1), 194A.060, 273.405-273.453, Chapter 344, 45 C.F.R. 96, 42 U.S.C. 9901-9926.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet will utilize the state administrative funds available under the Community Services Block Grant to administer these programs in the first year. Federal CARES funding will be used to provide additional community services and programs in 2020 and 2021. Costs will be within available appropriations.

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the state administrative funds under the Community Services Block Grant to administer these programs in subsequent years. Federal CARES funding will be used to provide additional community services and programs in 2020 and 2021. Costs will be within available appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

SECRETARY OF STATE
(As Amended at ARRS, June 9, 2020)

30 KAR 8:005. Notary public application; requirements for notarial acts performed with respect to electronic records and for remotely located individuals; notary public discipline [Notary Public applications and electronic and online registrations].

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.355, 423.390, 423.395, 423.415, 423.455

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~423.355 [423.415, KRS 423.390]~~, 423.415, and 423.455 authorize the Secretary of State to promulgate administrative regulations to implement KRS ~~423.300 [423.415]~~ to 423.455, and KRS 423.390 requires the Secretary of State to promulgate administrative regulations to establish forms and procedures applicable to the registration of notaries public. This ~~[emergency]~~ administrative regulation establishes definitions, prescribes the process of granting, renewing, conditioning, or denying a notary commission, establishes standards for the performance of notarial acts with respect to electronic records, establishes standards for the performance of online notarial acts, establishes standards for the retention of records ~~[and]~~ by notaries public authorized to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, and prescribes the manner of performing notarial acts for tangible records.

Section 1. Definitions. ~~[Words and terms defined in KRS 423.300 shall have the same meaning in this chapter. For the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.]~~

~~(1)(a)~~ "Digital Certificate" means an electronic record, issued by a third-party certificate authority, which certifies the ownership of a public key, rendering an electronic document as tamper-evident.

~~(2)(b)~~ "Electronic record" means information contained in or on a medium that requires electricity to be perceived. ~~["Member of the notary public's immediate family" means a spouse, former spouse, a grandparent, a grandchild, a parent, a child, a stepchild or any other person living in the same household.]~~

~~(3)(c)~~ "Notary technology" means an electronic device or process that allows a notary public to perform notarial acts with regard to electronic documents with or without the use of communication technology.

~~(4)~~ "Online notary public" means a notary public who has registered to perform electronic notarizations. ~~["Online notarial act" means an electronic notarization performed for a remotely located individual facilitated by communication technology.~~

~~(d)~~ "Notary technology" means an electronic device or process that allows a notary public to perform notarial acts with regard to electronic documents with or without the use of communication technology.]

~~(5)(e)~~ "Tangible record" means information contained in or on a medium, whether an original or duplicate, that can be perceived without the requirement of electricity.

Section 2. Notary Public Application, Approval or Denial of Application, Voluntary Termination, and Required Notice of Change of Information.

~~(1)(a)~~ Application. An application for a commission as a notary public shall be submitted on a form provided for that purpose by the Office of the Secretary of State or submitted on an

electronic portal established by the Office of the Secretary of State for that purpose. A person who executes an application for filing with the Secretary of State shall be deemed to have declared under penalty of perjury that to the person's knowledge, the contents of the application are true. Every application for a notarial commission ~~shall [must]~~ include:

~~(a)(1)~~ The full legal name of the applicant;

~~(b)(2)~~ The email address of the applicant;

~~(c)(3)~~ A telephone number for the applicant;

~~(d)(4)~~ The signature of the applicant;

~~(e)(5)~~ The county for which the application is being made;

~~(f)(6)~~ The physical and mailing address within the county of application where the applicant resides or is employed;

~~(g)(7)~~ A statement of whether the applicant has previously held a notary commission, the name under which the applicant was previously commissioned, and the date at which the most recent commission expired;

~~(h)(8)~~ A statement that the applicant is at least eighteen years of age;

~~(i)(9)~~ A statement that the applicant is a citizen or permanent legal resident of the United States;

~~(j)(10)~~ A statement that the applicant is able to read and write English;

~~(k)(11)~~ A statement identifying the surety provider from which the applicant intends to obtain surety;

~~(l)(12)~~ A statement that the applicant is not disqualified from becoming a notary public under the provision of KRS Chapter 423 or this administrative regulation [chapter];

~~(m)(13)~~ A statement that the applicant is not disqualified for any reason under Section ~~2(3)(a)-(f) of this administrative regulation [(2)(a)-(c)]~~; and

~~(n)(14)~~ Payment of the required fee.

~~(2)(b)~~ Approval or Denial of Application. ~~[(4)]~~ Approval of Application. If the applicant has complied with the provisions of KRS Chapter 423 and this administrative regulation [chapter], the application shall be approved. A notary commission ~~shall be [is]~~ effective as of the date of entry of that commission in the database of notaries public [notary-publics] on the website of the Secretary of State.

~~(3)(2)~~ Disapproval of Application. The Secretary of State may disapprove the application for the following reasons:

~~(a)(i)~~ The applicant's [notary-public's] failure to comply with KRS Chapter 423 or the provisions of this administrative regulation [chapter] or the existence of a pending inquiry regarding the applicant's [notary-public's] failure to comply with KRS Chapter 423 ~~or [and]~~ this administrative regulation [chapter];

~~(b)(ii)~~ Any information required under this administrative regulation is missing, inaccurate, incomplete, or cannot be independently verified;

~~(c)(iii)~~ A fraudulent, dishonest, or deceitful misstatement or omission of fact in the submitted application;

~~(d)(iv)~~ A finding against, or admission of liability by, the applicant in any legal proceeding or disciplinary action based on the applicant's fraud, dishonesty, or deceit;

~~(e)(v)~~ The denial, refusal to renew, revocation, or suspension of an applicant's notary commission or registration in another state; or

~~(f)(vi)~~ Failure of the applicant to maintain the required surety bond [an assurance].

~~(4)(3)~~ If the application or registration is disapproved, the Secretary of State ~~shall [will]~~ state the reasons for the disapproval.

~~(5)(c)~~ Voluntary Termination of Notary Commission. A notary public may terminate his or her [a notary] commission by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary

Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the Secretary of State for that purpose. Submission of a notification of termination of a notary commission shall automatically terminate [terminates] any notary registration.

~~(6)(d)~~ Change of Information. A notary public shall [must] notify the Office of the Secretary of State, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602, on a form promulgated by the Office of the Secretary of State for that purpose or on any electronic portal created by the Office of the Secretary of State for that purpose, during the period of the notary's commission and within ten (10) days of the change in any of the following information [of any change of the following information during the period of the notary's commission, within ten days of the change, on a form promulgated by the Office of the Secretary of State for that purpose or on any electronic portal created by the Office of the Secretary of State for that purpose]:

- ~~(a)(i) A change in~~ The notary's mailing, physical or electronic mail address ~~[of the notary public]~~;
- ~~(b)(ii) A change in~~ The notary's county of residence ~~[of the notary public]~~;
- ~~(c)(iii) A change in~~ The notary's legal name ~~[of the notary public]~~;
- ~~(d)(iv) A change in~~ The notary's ~~[notary public's]~~ signature;
- ~~(e)(v) A change in~~ The notary's ~~[notary public's]~~ electronic signature, if any; ~~or [and]~~
- ~~(f)(vi) A change in~~ The notary technology used by the notary public.

Section 3. Registration to Perform Notarial Acts with Respect to Electronic Records and Electronic Notarizations; ~~Electronic and Online notarization~~. ~~(1)(a)~~ Authority to perform electronic and online notarial acts. ~~[(1)–Electronic notarial acts.] A notary public [An individual] shall register [is authorized] to perform notarial acts with respect to electronic records by: [(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010 and KAR 8:005-Section 2;~~

~~(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform electronic notarial acts; and~~

~~(iii) Receiving written authorization to perform electronic notarial acts from the Secretary of State under Section 3 of this administrative regulation.~~

~~(2) Online notarial acts. An individual is authorized to perform online notarial acts by:~~

~~(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010;~~

~~(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform online notarial acts; and~~

~~(iii) Receiving written authorization to perform online notarial acts from the Secretary of State under Section 3 of this administrative regulation.~~

~~(3) An individual who is authorized to perform online notarial acts under this section is also authorized to perform electronic notarial acts.~~

~~(b) Registration procedures.~~

~~(1) Registration format. Registration under this section shall be by electronic registration] submitting the following information to the Secretary of State [pursuant to KRS 423.390 and shall include the following information]:~~

- ~~(a)(i)~~ The registrant's [individual's] full legal name;
- ~~(b)(ii)~~ The county in which the registrant [individual] resides or has his or her place of employment or practice in this Commonwealth;
- ~~(c)(iii)~~ The registrant's date of birth;
- ~~(d)(iv)~~ The registrant's notary identification number and the expiration date of the registrant's notary commission;
- ~~(e)(v)~~ The electronic mail address ~~[, physical]~~ and mailing address where the registrant resides or is employed;

~~(f)(vi)~~ An indication of whether the registrant [individual] is registering to perform [electronic] notarial acts with respect to electronic records or electronic notarizations ~~[online notarial acts]~~, or both;

~~(g)(vii)~~ A description of the notary technology that the registrant [individual] intends to use to perform [electronic] notarial acts with respect to electronic records or electronic notarizations [and/or online notarial acts], or both, including the technologies or devices to maintain the journal required under KRS 423.380 and to render electronic records tamper-evident after a notarial act is completed;

~~(h)(viii)~~ A copy of the registrant's [applicant's] electronic signature, the digital certificate required under ~~[30–KAR–8:005] Section 4 of this administrative regulation~~, the official stamp, if any, along with any necessary instructions or techniques supplied by a vendor or notary that allows the signature and stamp to be read and authenticated[;] in a portable document format (.pdf) ~~[file format] [acceptable to the Secretary of State]~~;

~~(i)(ix)~~ The name, address, and Web site URL of any vendors or other persons that shall ~~[will]~~ directly supply the registrant [notary public] with technology that he or she [the notary public] intends to use;

~~(j)(x)~~ A statement of whether the notary technology provider has registered with the Secretary of State;

~~(k)(xi)~~ A copy of any necessary instructions or techniques supplied by a vendor that allow the registrant [notary] to conduct identity proofing and credential analysis;

~~(l)(xii)~~ An explanation of the methods or technology by which the registrant [notary] shall ~~[will]~~ maintain and store the journal required by KRS 423.380;

~~(m)(xiii)~~ A statement that the technologies or devices named in the registration are compliant with KRS Chapter 423 and ~~[with] this administrative regulation [chapter]~~;

~~(n)(xiv)~~ A copy of the registrant's ~~[The county, book and page where the notary's] surety bond in the amount of \$1,000 [is recorded]; and~~

~~(o)(xv)~~ A disclosure of any convictions, professional license or commission revocations, professional disciplinary actions, or other disqualifying actions or proceedings taken under the laws of any state against the registrant [notary public].

~~(2) Submission of registration form. The registration form shall [must] be submitted electronically to the Secretary of State as provided by information posted on the Secretary of State's Web site at <https://sos.ky.gov/>.~~

~~(3) Use of additional vendors. If, during the term of his or her [a notary public's] commission, a [the] notary public intends to use the technologies of a [another] vendor or person other than those identified in subsection [Section] (1)(i) of this Section, then an additional notification identifying the [such] other vendors or [other] persons shall [must] be submitted to the Secretary of State as provided in this Section and in accordance with the manner established by the Secretary of State as posted on the Secretary of State's Web site at <https://sos.ky.gov/>.~~

~~(4)(a)(e)~~ Approval or disapproval by the Secretary of State. ~~[(1)] Approval of registration. If [the provider of the technology identified by the notary public in the registration required under Section 2 of this administrative regulation has registered with the Secretary of State, and] the registrant has complied with the provisions of KRS Chapter 423 and this administrative regulation [chapter], the registration to perform notarial acts with respect to electronic records shall be approved within thirty (30) days of its submission. A registration shall be [is] effective as of the date of entry of that registration in the database of the Secretary of State.~~

~~(b)(2)~~ Disapproval of registration. The Secretary of State may disapprove and reject a [the] registration [and reject the notary public's registration] for the following reasons:

~~1.(i)~~ The registrant's ~~[notary public's]~~ failure to comply with KRS Chapter 423 or the provisions of this administrative regulation [chapter] or a pending inquiry regarding the registrant's [notary public's] failure to comply with KRS Chapter 423 ~~or [and] this administrative regulation [chapter]~~;

~~2.(ii)~~ Any information required under this Section [2 of this administrative regulation] is missing, inaccurate, or incomplete;

~~3. [(#)]~~ A fraudulent, dishonest, or deceitful misstatement or omission in the submitted registration;

~~4. [(#)]~~ A finding against, or admission of liability by, the registrant in any legal proceeding or disciplinary action based on the registrant's fraud, dishonesty, or deceit;

~~5. [(#)]~~ Denial, refusal to renew, revocation, or suspension of a notary commission or registration in another state; **or**

~~6. [(#)]~~ Failure of the **registrant [notary]** to maintain **a surety bond in the amount of \$1,000 [an assurance; or**

~~(vii) The provider of the technology identified by the notary public has not registered with the Secretary of State].~~

~~5. [(3)]~~ If the ~~[notary public's]~~ registration is disapproved, the Secretary of State **shall [will]** state the reasons for the disapproval.

~~6. [(d)]~~ Termination of electronic registration. A notary public may terminate an electronic registration by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the Secretary of State for that purpose. Termination of a **notary's [notary public's]** electronic registration **shall [does]** not terminate **his or her [a notary public's]** commission.

~~7. [(e)]~~ Renewal of commission. The renewal of the commission of a notary public who has previously registered to perform notarial acts with regard to electronic records or online notarizations under **this Section [1 of this administrative regulation]** constitutes renewal of **his or her [the notary public's]** registration without the necessity of submitting another registration **pursuant to [under]** this **Section [administrative regulation]**.

~~8. [(f)]~~ Updated technology. Nothing **in this Section [herein]** shall be construed to prohibit a notary public from receiving, installing, or using a hardware or software update to the technologies that **he or she [the notary public]** identified under **this Section [2 of this administrative regulation]** if the hardware or software update does not result in technologies that are materially different from the technologies that the notary public identified.

Section 4. Standards for **the Performance of Notarial Acts with Respect to Electronic Records [notarization of electronic documents]**.

~~1. [(a)]~~ Tamper-evident technology requirements. A notary public **shall [must]** select one **(1)** or more tamper-evident technologies to perform notarizations with regard to electronic records. No person **shall [may]** require a notary public to use a technology that the notary public has not selected. The tamper-evident technology **shall [must]** consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology. A notary public **shall [must]** attach or logically associate **his or her [the notary public's]** electronic signature and official stamp, if any, to an electronic record that is the subject of a notarial act by use of the digital certificate. A notary public **shall [may]** not perform an electronic notarization if the digital certificate:

~~(a) [(1)]~~ Has expired;

~~(b) [(2)]~~ Has been revoked or terminated by the issuing or registering authority;

~~(c) [(3)]~~ Is invalid; or

~~(d) [(4)]~~ Is incapable of authentication.

~~2. [(a) [(b)]]~~ Requirements of official stamp. ~~[(4)]~~ A notary public **shall [is]** not **be** required to use an official stamp when performing notarial acts with respect to electronic records.

~~(b) [(2)]~~ A notary public who uses an official stamp **shall [must]** use the same unique official stamp for all notarial acts with respect to electronic records that are performed for an individual that is not remotely located. An official stamp under this Section is an official seal of office of the notary public for all purposes. An official stamp **shall [must]** conform to the following requirements:

~~1. [(f)]~~ Required information. An official stamp shall substantially conform to ~~[the following design:]~~ a rectangular or circular seal **design and shall include the name of the notary public [with the notary public's name]** as it appears on **his or**

her [the] commission, **the notary's commission number, the commission expiration date, and** the words "Commonwealth of Kentucky" and "Notary Public" ~~[-the notary public's commission number, and the commission expiration date]~~.

~~2. [(#)]~~ Format and size. When affixed to an electronic record, an official stamp **shall [must]** be clear, legible, and photographically reproducible. An official stamp **shall [is]** not **be** required to be within a minimum or maximum size when photographically reproduced on an electronic record.

(3) If a notary public elects not to use an official stamp when performing notarial acts with respect to electronic records, the certificate of the notarial act on the electronic record **shall [must]**:

~~(a) [(f)]~~ Contain the name of the notary public as it appears on **his or her [the notary public's]** commission;

~~(b) [(#)]~~ Indicate the title "Notary Public" for any notarial act with respect to electronic records; and

~~(c) [(#)]~~ Indicate the **notary's [notary public's]** commission number and ~~[the]~~ commission expiration date.

~~(4) [(e)]~~ Use of electronic signature and stamping device. A notary public **shall [is]** **be** responsible for the security of **his or her [the notary public's]** stamping device and **shall [may]** not allow another individual to use the device to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the notary signature and stamping device and shall not disclose any access information used to affix **his or her [the notary public's]** electronic signature or official stamp to electronic records, except:

~~(a) [(1)]~~ When requested by the Secretary of State or a law enforcement officer;

~~(b) [(2)]~~ When required by court order or subpoena; or

~~(c) [(3)]~~ Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in **[30-KAR 8:005;]** Section 5 ~~(6)(a) of this administrative regulation [(g)]~~.

~~5. [(a) [(d)]]~~ Protection against theft, alteration, or misuse. ~~[(4)]~~ A notary public **shall [may]** not allow any other individual to alter or use his or her electronic signature, notary technology, official stamp, or stamping device to perform a notarial act.

~~(b) [(2)]~~ Upon resignation, revocation, or expiration of the notary's commission, **his or her [the notary public's]** notary technology and electronic stamping device (including any coding, disk, digital certificate, card, software, or password that enables the notary public to attach or logically associate the notary's electronic signature or official stamp to an electronic record) **shall [must]** be destroyed or disabled to prohibit its use by any other person. A former notary public whose commission terminated for a reason other than revocation or denial of renewal is not required to destroy **his or her [the notary public's]** notary technology or electronic stamping device if the former notary public is recommissioned as a notary public within thirty **(30)** days after the termination of **his or her [the notary public's]** former commission.

~~(c) [(3)]~~ A notary public shall promptly notify the Secretary of State on actual knowledge of the theft or vandalism of the **notary's [notary public's]** notary technology or electronic stamping device. A notary public shall promptly notify the Secretary of State on actual knowledge of the unauthorized use by another person of the **notary's [notary public's]** electronic signature, notary technology, or electronic stamping device.

~~(6) [(e)]~~ Tangible copies of an electronic record. A notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record if the notary has taken reasonable steps to confirm the accuracy of that certification.

Section 5. Standards for **Electronic Notarizations [online notarial acts]**.

~~1. [(a)]~~ Notarial acts with respect to electronic records. In performing **electronic notarizations [online notarial acts with respect to electronic records]**, an online notary public **shall [must]** comply with the **registration** requirements ~~[for electronic notarization as provided in 30-KAR 8:005] in [of]~~ Section 3 **and the standards for notarial acts with respect to electronic records in Section 4 of this administrative regulation**.

~~2. [(b)]~~ Requirements of official stamp.

~~(1)~~ A notary public is not required to use an official stamp

when performing online notarizations.

~~(2) A notary public who uses an official stamp must use the same unique official stamp for all notarizations involving online notarial acts. An official stamp under this section is an official seal of office of the notary public for all purposes. An official stamp must conform to the following requirements:~~

~~(i) Required information. An official stamp shall substantially conform to the following design: a rectangular or circular seal with the notary public's name as it appears on the commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary public's commission number, and the commission expiration date.~~

~~(ii) Online notarial acts.] If used for electronic notarizations, an online notary public may use [uses an official stamp to perform online notarial acts,] an [the] official stamp that shall contain [must contains] the words "Online Notary Public" in lieu of the words "Notary Public." A stamp that contains the words "Online Notary Public" shall [may] only be used to perform notarizations with regard to remotely located individuals. [~~

~~(iii) Format and size. When affixed to an electronic record, an official stamp must be clear, legible, and photographically reproducible. An official stamp is not required to be within a minimum or maximum size when photographically reproduced on an electronic record.~~

~~(3) If a notary public elects not to use an official stamp when performing online notarial acts the certificate must:~~

~~(i) Contain the name of the notary public as it appears on the notary public's commission;~~

~~(ii) Indicate the title "Online Notary Public" for any notarial act with respect to a remotely located individual; and~~

~~(iii) Indicate the notary public's commission number and the commission expiration date.]~~

~~[3](e) Physical location. An online notary public shall be physically located in this Commonwealth at the time of the performance of the online notarization.~~

~~[4](d) Identity proofing. An online notary public shall have satisfactory evidence of the identity of a remotely located individual if the online notary public has personal knowledge of the identity of the individual. If an online notary public does not have personal knowledge [or satisfactory evidence] of the identity of a remotely located individual [as defined in Section 5], the online notary public shall [must] reasonably verify the individual's identity through at least two [2] different types of identity proofing processes or services. Those processes shall include remote presentation of an appropriate government-issued identification card that contains the signature and photograph of [by] the remotely located individual, credential analysis of that government-issued identification card [credential] by a service or process that analyzes the person's identity credential, binds the individual's identity to the individual following a successful dynamic knowledge-based authentication assessment, and permits the notary to visually compare the identity credential and the individual. The analysis of the government-issued identification card [identity credential] and the dynamic knowledge-based authentication assessment shall conform to the following requirements:~~

~~[a](1) Credential analysis. The analysis of a government-issued identification card [an identity credential] shall [must] use public or private data sources to confirm the validity of the identity [credential] that is the subject of remote presentation by a remotely located individual and, at a minimum, shall, at a minimum]:~~

~~1.[(i)] Use automated software processes to aid the online notary public in verifying the identity of each remotely located individual;~~

~~2.[(ii)] Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;~~

~~3.[(iii)] Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and~~

~~4.[(iv)] Enable the online notary public to visually compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the online notary public in real time through communication technology.~~

~~[b](2) Dynamic knowledge-based authentication. A dynamic knowledge-based authentication assessment shall be [is] successful if it meets the following requirements:~~

~~1.[(i)] The remotely located individual shall [must] answer a minimum of five [5] questions related to the individual's personal history or identity formulated from public or private data sources;~~

~~2.[(ii)] Each question shall [must] have a minimum of five [5] possible answer choices;~~

~~3.[(iii)] At least eighty [80] percent [80%] of the questions shall [must] be answered correctly;~~

~~4.[(iv)] All questions shall [must] be answered within two [2] minutes;~~

~~5.[(v)] If the remotely located individual fails the first attempt, the individual may attempt the authentication assessment one [1] additional time within twenty-four (24) hours;~~

~~6.[(vi)] During the second authentication assessment, a minimum of forty (40) percent of the prior questions shall [must] be replaced;~~

~~7.[(vii)] If the remotely located individual fails the second authentication assessment, the individual shall [is] not be allowed to attempt identity authentication with the same online notary public within twenty-four (24) hours of the second failed authentication assessment; and~~

~~8.[(viii)] The online notary public shall [must] not be able to see or record the questions or answers.]~~

~~(e) Other methods of identity verification. An online notary public has satisfactory evidence of the identity of a remotely located individual if the online notary public has personal knowledge of the identity of the individual, or if the individual is identified by oath or affirmation of a credible witness, or if the online notary has reasonably verified the identity of the individual by use of a valid public key certificate, with the following requirements:~~

~~(1) Personal knowledge. An online notary public has personal knowledge of the identity of the individual appearing before the online notary public if the individual is personally known to the online notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.~~

~~(2) Credible witness. To be a credible witness, an individual must have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the online notarization. If the credible witness is a remotely located individual, then the online notary public must reasonably verify the credible witness's identity under Section 3 of this administrative regulation or have personal knowledge of the credible witness under subsection 1 of this section. A credible witness may be a remotely located individual if the online notary public, credible witness, and individual whose statement or signature is the subject of the online notarization can communicate by using communication technology.]~~

~~[c]1.[(3) Public key certificate. [(i)] The identity of the individual appearing before the online notary public may be verified by use of a valid public key certificate that meets the requirements of a digital certificate, [as that term is defined in 30 KAR 8:005 Section 1,] complies with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology,] and is issued by a technology provider or digital certificate service registered with the Secretary of State pursuant to [Section 7 of] this administrative regulation.~~

~~2.[(ii)] A public key certificate shall [is] not be valid for identity verification if the public key certificate has expired, has been revoked or terminated by the issuing or registering authority, is invalid, or is incapable of authentication.~~

~~5.[(f)] Requirements for communication technology. The communication technology used by an online notary public in the~~

performance of online notarizations shall [must] conform to the following requirements:

(a)[(1)] Audio-video feeds. Communication technology shall [must] provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the online notary public and remotely located individual to see and speak with each other. The process shall [must] provide a means for the online notary public reasonably to confirm that a record before the online notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(b)[(2)] Security measures. Communication technology shall [must] provide reasonable security measures to prevent unauthorized access to:

1.[(i)] The live transmission of [the] audio-visual feeds;

2.[(ii)] The methods used to perform the identify verification process under subsection 4 of this Section [Sections 3 or 4 of this administrative regulation, as applicable]; and

3.[(iii)] The record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(c)[(3)] Work flow. If a remotely located individual exits [must exit] the workflow, the individual shall [must] restart the identify verification process under subsection 4 of this Section [Sections 3 or 4 of this administrative regulation, as applicable,] from the beginning.

(d)[(4)] Recording. All notarial acts performed using communication technology shall [must] be electronically recorded. The recording shall contain a recitation that the notary has informed the individuals participating in the notarial act that it shall [will] be electronically recorded.

(6)(a)[(g)] Notary technology provider registration. [(1)] A provider of technology used in the process of electronic or online notarization shall [must] register with Secretary of State in the manner directed by the Secretary of State and provide the following information:

1.[(i)] The legal name of the technology provider;

2.[(ii)] The mailing address of the technology provider;

3.[(iii)] The physical address of the technology provider;

4.[(iv)] A designated contact person for that provider;

5.[(v)] The phone number, physical address, and email address of the contact person;

6.[(vi)] The name of the technology provided;

7.[(vii)] The name of the provider or providers of the knowledge-based authentication, credential analysis, or digital certificate services, if different from the technology provider;

8.[(viii)] A description of the technology used and the manner in which it complies with KRS Chapter 423 and this administrative regulation [chapter];

9.[(ix)] The process by which the technology provider verifies the identity of the notary public or digital certificate holder using the technology;

10.[(x)] A plan for the retention and disposition of records created, generated, or retained in conjunction with the use of the technology, including [but not limited to,] any electronic journal, recordings, or records created or retained during an electronic or online notarization, in the event the technology provider no longer engages in the business of providing electronic or online notary technology; and

11.[(xi)] An authorized certification that the technology provided complies with KRS Chapter 423 and this administrative regulation [chapter].

(b)[(2)] A registration in compliance with this subsection [section] is non-transferable and shall [may] not be conveyed to any other notary technology provider.

(7)(a)[(h)] Complaint Against a Notary Technology Provider. [(1)] A written complaint may be made against a notary technology provider registered with the Office of the Secretary of State. A complaint that does not comply with the requirements of this subsection [section] shall [will] not be filed, responded to, or acted upon by the Secretary of State.

(b)[(2)] The Office of the Secretary of State may commence an investigation of a registered notary technology provider as a result of a complaint or upon its own initiative.

(c)[(3)] An investigation under this subsection [section] may include:

1.[(i)] An initial request for information from the accused provider;

2.[(ii)] A copy of the complaint forwarded to the registration provider; and

3.[(iii)] A request for supporting documentation and other sources of information.

(d)[(4)] A provider shall provide true, accurate, and complete copies of all information requested by the Office of the Secretary of State.

(e)[(5)] Failure of a provider to comply with an investigation directive may result in revocation of the provider's registration.

(f)[(6)] A finding that the provider has failed to comply with the provisions of KRS Chapter 423 or this administrative regulation [chapter] may result in revocation of the provider's registration.

(8)[(f)] Duties of Notary Technology Provider. A notary technology provider shall [must]:

(a)[(1)] Respond to a request for information from the Office of the Secretary of State within the time directed. Any request for information shall [will] be sent to the addresses provided upon registration;

(b)[(2)] Take reasonable steps to ensure that a notary public or digital certificate holder is able to use the technology provided in accordance with this administrative regulation [chapter]; and

(c)[(3)] Suspend the use of any technology for any notary or digital certificate holder whose commission, registration, or digital certificate has expired, been revoked, or [been] suspended.

Section 6. [~~Electronic and Online~~] Record Retention Requirements for Notarial Acts with Respect to Electronic Records and Electronic Notarizations.[

(a) Record retention. (1) A notary public that is registered to perform notarial acts with respect to electronic records or electronic notarizations [notarial acts involving remotely located individuals using communication technology] shall [must] maintain one (1) or more journals in a permanent, tamper-evident electronic format to chronicle those notarizations.

(2) A journal entry shall be made contemporaneously with the performance of the notarial act and shall contain:

(a)[(i)] The date and time of the notarial act;

(b)[(ii)] A brief description of the record, if any, and the type of notarial act;

(c)[(iii)] The full name and address of each individual for whom a notarial act is performed;

(d)[(iv)] A statement of how identification was established and a description of any identification credential presented including the type of credential and dates of issuance and expiration of the credential;

(e)[(v)] The fee charged, if any; and

(f)[(vi)] For a notarial act involving remotely located individuals using communication technology, an audio-visual recording (or a link thereto) of the performance of the notarial act that complies with KRS Chapter 423 and this administrative regulation [chapter].

(3) A journal shall [must] be created and stored in a computer or other electronic storage device or process that protects the electronic journal and any audio-visual recording against unauthorized access by password or cryptographic process. A recording shall [must] be created in an industry-standard audio-visual file format and shall [must] not include images of any record in which a remotely located individual made a statement or on which the remotely located individual executed a signature.

(4) An electronic journal shall [must] be retained for at least ten (10) years after the last notarial act chronicled in the journal. An audio-visual recording shall [must] be retained for at least ten (10) years after the recording is made.

(5) A journal entry shall not record [an] identification numbers assigned to an individual by a governmental agency or any biometric identifier.

(6) A notary public shall [must] take reasonable steps to ensure that a backup of the journal and audio-visual recording exists and is secure from unauthorized use.

(7) On the death or adjudication of incompetency of a current or former notary public ~~who [that]~~ is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals, the online notary's [notary public's] personal representative or guardian or any other person knowingly in possession of a journal or audio-visual recording shall [must]:

~~(a)[(i)]~~ Comply with the retention requirements of this subsection;

~~(b)[(ii)]~~ Transmit the journal and recording to one (1) or more repositories under this Section ~~[2 of this administrative regulation]~~; or

~~(c)[(iii)]~~ Transmit the journal and recording in an industry-standard readable data storage device to his or her [his/her] notary technology provider.

~~(8)[(b)]~~ Repositories. A notary public ~~who [that]~~ is registered to perform notarial acts with respect to electronic records or electronic notarizations [notarial acts involving remotely located individuals], a guardian, conservator, or agent of the [such a] notary public, or a personal representative of [such] a deceased online notary public may, by written contract, engage a third person to act as a repository to provide the storage required by this Section ~~[1 of this administrative regulation]~~. A third person under contract under this Section shall be deemed a repository or custodian under KRS 423.380(8) or KRS 423.455(5), as applicable. The contract shall:

~~(a)[(1)]~~ Enable the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public to comply with the retention requirements of this Section ~~[1 of this administrative regulation]~~ even if the contract is terminated; or

~~(b)[(2)]~~ Provide that the information shall [will] be transferred to the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public if the contract is terminated.

~~(9)[a](c)]~~ Lost, Stolen, or Improperly Accessed Journal. ~~[(1)]~~ A notary public shall [is] be responsible for the security of his or her [the notary public's] journal and shall [may] not allow another individual to use the journal to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the journal and shall not allow access to his or her [the notary public's] journal, except:

~~1.[(f)]~~ When requested by the Secretary of State or a law enforcement officer;

~~2.[(h)]~~ When required by court order or subpoena; or

~~3.[(i)]~~ Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in accordance with [30 KAR 8:005], Section 5 of this administrative regulation.

~~(b)[(2)]~~ A notary public shall promptly notify the Secretary of State of a lost or stolen journal upon discovering the journal is lost or stolen.

~~(10)[(d)]~~ Disposition of Notarial Records upon Termination of Commission or Registration. Upon the revocation, resignation, termination, or suspension of the commission of a [the] notary public or the revocation, resignation, termination, or suspension of the registration of a [the] notary public to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, the notary public shall retain the journal in accordance with the provisions of this Section ~~[1 of this administrative regulation]~~.

Section 7. Prior Notice to the Secretary of State and Standards for the Use of Communication Technology in the Performance of Notarial Acts with Respect to Tangible Records. (1) A notary public shall, prior to the initial use of communication technology in the performance of notarial acts with respect to tangible records, notify the Office of the Secretary of State in writing by email or regular U.S. mail. The notice shall identify the communication technology the notary public has selected that is capable of creating an audio-visual recording of the performance of the notarial act.

The Office of the Secretary of State shall make an entry of the information provided in the notice.

(2) In using communication technology in the performance of notarial acts with respect to tangible records, a notary public shall have satisfactory evidence of the identity of a remotely located individual if:

(a) The notary public has personal knowledge of the identity of the remotely located individual;[;]

(b) The remotely located individual is identified by oath or affirmation of a credible witness appearing in person or by means of communication technology before the notary public;[;]or

(c) [if] The notary public is reasonably able to identify the remotely located individual by at least two (2) different types of identity-proofing processes or services as provided in Section 5(4)[(d)] of this administrative regulation.

(3) A notary public who performs notarial act with respect to tangible records shall create and maintain for a period of not less than ten (10) years, an audio-visual recording of the performance of the notarial act.

(4) A certificate executed by a notary public for the performance of a notarial act using communication technology with respect to tangible records shall contain the statement, "This notarial act involved the use of communication technology." [Notary Discipline.

~~(a) Prohibited Conduct. Failure to comply with a provision of KRS 423.395 may result in the denial, refusal to renew, revocation, suspension or conditioning of a notary commission and may result in disciplinary action.~~

~~(b) Conviction, Finding or Admission. Denial, refusal to renew, revocation, suspension or conditioning of a notary commission shall result upon notification to the Secretary of State of:~~

~~(1) A conviction of felony or crime involving fraud, dishonesty or deceit;~~

~~(2) A finding against, or admission of liability by, the notary public in any legal proceeding or disciplinary action alleging fraud, dishonesty or deceit by the notary; or~~

~~(3) A judicial determination of liability in a suit for fraud, misrepresentation or for failure to discharge the duties of a notary public.~~

~~(c) A notary public shall promptly notify the Secretary of State, in writing, of a conviction, finding, admission of liability, or judicial determination of liability as defined in this section.~~

~~(d) Complaint Against a Notary Public. A person that knows of a violation of Section 1 or 2 may file a complaint against a notary public with the Secretary of State. A complaint shall be in writing, dated, and signed by the person making the complaint. A complaint that does not comply with the requirements of this section will not be filed, responded to or acted upon by the Secretary of State.~~

~~(e) Any condition, restriction, suspension or revocation of a notary commission will automatically have the same effect on the electronic or online registration the notary public holds.]~~

Section 8. Notary Discipline. (1) Failure to comply with the provisions of KRS 423.395 or this administrative regulation may result in the denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission but shall not invalidate a notarial act performed by a notary public.

(2) Denial, refusal to renew, revocation, suspension, or conditioning of a notary commission shall result upon notification to the Secretary of State of:

(a) A conviction of a felony or a crime involving fraud, dishonesty, or deceit;

(b) A finding against, or admission of liability by, the notary public in any legal proceeding or disciplinary action alleging fraud, dishonesty, or deceit by the notary; or

(c) Judicial determination of liability in a suit for fraud, misrepresentation, or failure to discharge the duties of a notary public.

(3) A notary public shall promptly notify the Secretary of State, in writing, of a conviction, finding, admission of liability, or judicial determination of liability as established in this Section.

(4) A person who knows of a violation [of] may file a complaint against a notary public with the Secretary of State.

(5) A complaint shall be in writing, dated, and signed by the person making the complaint. A complaint that does not comply with the requirements of this subsection shall not be filed, responded to, or acted upon by the Secretary of State.

(6) Any condition, restriction, suspension, or revocation of a notary commission shall have the same effect on the electronic or online registration the notary public holds.

(7) The Secretary of State shall cause a review of any complaint filed against a notary public to determine whether the allegations in the complaint would establish a violation by a notary public, and any appropriate disciplinary action, which shall be informed by the following factors:

(a) Nature and severity of the act, violation, or crime committed;

(b) Number and variety of current violations;

(c) Evidence pertaining to the requisite honesty, credibility, truthfulness, and integrity of the notary public;

(d) Actual or potential harm to the general public, group, individual or customer;

(e) History of complaints; and

(f) Prior disciplinary record or warning;

(8) The Secretary of State shall inform the notary public of any disciplinary action by mailing a notice of disciplinary action to the home address of the notary public on file. The notice shall inform the notary public of the basis for the disciplinary action and the right to a hearing. Administrative proceedings under this Section shall be governed by the provisions of KRS Chapter 13B.

(9) The Secretary of State shall certify any disciplinary action to the clerk of the county in which the notary public received his or her commission.

CONTACT PERSON: Michael Wilson, Director of Business and Deputy General Counsel, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687; email sos.secretary@ky.gov.

BOARDS AND COMMISSIONS
Board of Pharmacy
(As Amended at ARRS, June 9, 2020)

201 KAR 2:175. Emergency prescription refills of up to ~~af/~~seventy-two (72) hour supply or greater than a seventy-two (72) hour supply[~~prescription refills~~].

RELATES TO: KRS Chapters 217, 315

STATUTORY AUTHORITY: KRS 217.215(3), 315.191

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 217.215(3) requires the Board of Pharmacy to promulgate administrative regulations to carry out the provisions for emergency refills by a pharmacist in emergency situations when authorization may not be readily or easily obtained from the prescribing practitioner. KRS 315.191 authorizes the board to promulgate administrative regulations necessary to regulate and control all matters set forth in KRS Chapter 315 relating to pharmacists.** This administrative regulation **establishes[sets out]** the conditions **for when[whereby]** a prescription may be refilled in an emergency situation and the prescriber is unavailable.

Section 1. If a pharmacist receives a request for a prescription refill with no refill authorized and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may:

(1) Dispense a one (1) time emergency refill of up to a seventy-two (72) hour supply of the **maintenance** medication when:

~~(a)[(1)]~~ The prescription refill is not for a controlled substance;

~~(b)[(2)]~~ The medication is essential to the maintenance of life or to the continuation of therapy in chronic conditions;

~~(c)[(3)]~~ In the pharmacist's professional judgment, the interruption of therapy ~~may[might]~~ reasonably produce undesirable health consequences or may be detrimental to the patient's welfare and cause physical or mental discomfort;

~~(d)[(4)]~~ The pharmacist notes on the prescription record the date, the quantity dispensed, and ~~the pharmacist's[his]~~ name or initials; and

~~(e)[(5)]~~ In all situations an emergency refill ~~shall[must]~~ be followed by authorization from the prescriber for continued therapy.

~~(2)[(6) A pharmacist may]~~ Dispense greater than a seventy-two (72) hour supply of maintenance medication if **in addition to the requirements in subsection (1) of this section:**

~~(a)~~ The standard unit of dispensing for the drug exceeds a seventy-two (72) hour supply;

~~(b)~~ The pharmacist dispenses a supply of the drug that is equal to the standard unit of dispensing for the drug; and

~~(c)~~ The drug is used for insulin therapy or the treatment of chronic respiratory diseases.

Section 2. Violation of any provision of this administrative regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.121.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, or email Larry.Hadley@ky.gov.

BOARDS AND COMMISSIONS
Board of Pharmacy
(As Amended at ARRS, June 9, 2020)

201 KAR 2:230. Special limited pharmacy permit – Central Fill[pharmacy].

RELATES TO: KRS 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.020, 315.035, ~~315.0351~~, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters set forth in KRS Chapter 315 relating to pharmacists and pharmacies.** KRS 315.020 requires that prescription drugs, medicines, and pharmaceuticals be dispensed or manufactured by a licensed pharmacist. KRS 315.035 and ~~[KRS] 315.0351~~ require[requires] that all pharmacies hold a permit issued by the board. This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those pharmacies that package, label, and distribute ~~central fill[refill]~~ prescriptions to pharmacies in the Commonwealth.

Section 1. Definition. "Central ~~fill[refill]~~ pharmacy" means a pharmacy ~~[located in the Commonwealth]~~ that provides packaging, labeling, and delivery of a ~~[refill]~~ prescription product to another pharmacy for the purpose of the ~~dispensing[refilling]~~ of a valid prescription.

Section 2. The central ~~fill[refill]~~ pharmacy shall:

(1) Either:

(a) Have a written contract with the pharmacy which has custody of the original prescription authorization for ~~[refill]~~ dispensing; or

(b) Be under common ownership with that pharmacy;

(2) Prepare the label for the ~~[refill]~~ prescription product which clearly identifies the name and address of the pharmacy preparing the product for ~~[refill]~~ dispensing and the name and

address of the pharmacy that will receive the prepared product for dispensing to the patient;

(3) In addition to its obligation to maintain complete and accurate records of drug products received and otherwise disposed of, maintain complete and accurate records of the preparation of the [refilled] prescription product, including the name of the:

(a) Pharmacist who verified the accuracy of the [refilled] prescription product;

(b) Pharmacy preparing the [refilled] prescription product; and

(c) Pharmacy to which the prepared [refill] prescription product is delivered;

(4) Provide the originating pharmacy with written information that describes how a patient may contact the central fill[refill] pharmacy if the patient has any questions about the preparation of the prescription [refill]; and

(5) Be responsible for ensuring that the order has been properly prepared and verified by a pharmacist.

Section 3. The pharmacy to which a prepared centrally filled prescription [refill] product is delivered shall:

(1) In addition to its obligation to maintain complete and accurate records of drug products received and otherwise disposed of, maintain complete and accurate records of the receipt and dispensing of the centrally filled[refilled] prescription product, including the name of the:

(a) Pharmacist who verified the accuracy of the [refilled] prescription product prior to its dispensing; and

(b) Pharmacy preparing the [refilled] prescription product;

(2) Be responsible for ensuring that the centrally filled prescription product [refill] has been properly prepared, packaged, and labeled;

(3) Provide the patient with written information that described how a patient may contact either:

(a) The central fill[refill] pharmacy if the patient has any questions about the preparation of the prescription [refill]; or

(b) The dispensing pharmacy if the patient has any questions about the use of the medication; and

(4) Be responsible for adherence to the requirements of 201 KAR 2:210[230].

Section 4. Effective January 1, 2020, a pharmacist who provides a pharmacy service on a prescription dispensed in Kentucky shall be licensed in Kentucky.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

BOARDS AND COMMISSIONS

Board of Dentistry

(As Amended at ARRS, June 9, 2020)

201 KAR 8:550. Anesthesia and sedation related to dentistry.

RELATES TO: KRS 313.035

STATUTORY AUTHORITY: KRS 313.035(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 313.035(1) requires the board to promulgate administrative regulations related to[conscious] anesthesia and sedation permits. The administration of local anesthesia, sedation, and general anesthesia is an integral part of dentistry and the foundation of pain control. This administrative regulation establishes requirements for permits to perform[conscious] sedation or anesthesia associated with dentistry.

Section 1. Definitions. (1) "Analgesia" means the diminution or elimination of pain.

(2) "ADA" means American Dental Association.

(3) "ASA" means American Society of Anesthesiologists.

(4) "Competency" means displaying special skill or

knowledge derived from training and experience.

(5) "Continual" means repeated regularly and frequently in steady succession.

(5[6]) "Continuous" means prolonged without any interruption.]

(4) "Advanced Cardiac Life Support" or "ACLS" means a certification that an individual has successfully completed an advanced cardiac life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:532.

(2) "Anesthesia" means an artificially induced insensibility to pain usually achieved by the administration of gases or drugs.

(3) "Anesthesia and sedation" means:

(a) Minimal sedation;

(b) Moderate sedation;

(c) Deep sedation; and

(d) General anesthesia.

(4) "Board" means the Kentucky Board of Dentistry.

(5) "Certified registered nurse anesthetist" means a registered nurse who is currently certified to practice nurse anesthesia in Kentucky.

(6) "Conscious sedation permit" means a permit that was issued by the board prior to February 1, 2011, that authorized the dentist to whom the permit was issued to administer parenteral sedation for the practice of dentistry.]

(6[7]) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function could[may] be impaired. The patient might[may] require assistance in maintaining a patent airway, and spontaneous ventilation could[may] be inadequate. Cardiovascular function is usually maintained.

(7[8]) "Enteral" means a technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (oral, rectal, or sublingual).

(8[9]) "General anesthesia" means a drug-induced loss of consciousness during which a patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation could[may] be required because of depressed spontaneous ventilation or drug-[induced] depression of neuromuscular function. Cardiovascular function might[may] be impaired.

(9[10]) "Immediately available" means onsite at the facility and available for immediate use. [

(11) "Independently practicing qualified anesthesia provider" means an individual with a valid Kentucky license or permit to provide sedation.]

(10[12]) "Local anesthesia" means the elimination or diminution of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug.

(11[13]) "Maximum Recommended Dose" or "MRD" means the maximum FDA-recommended dose of a drug for minimal sedation, as printed in FDA-approved labeling for unmonitored home use.

(12[14]) "Minimal sedation" means a minimally depressed level of consciousness produced by a pharmacological method that[which] retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination might[may] be modestly impaired, ventilatory and cardiovascular functions are unaffected. [

(9) "Facility" means a location in which anesthesia or sedation is administered for the practice of dentistry.

(10) "Facility inspection" means an on-site inspection by the board or its designee to determine if a facility where the applicant proposes to provide anesthesia and sedation services is adequately supplied, equipped, staffed, and maintained in a condition to support the provision of anesthesia and sedation services in a manner that meets the requirements of this administrative regulation.

(11) "General anesthesia" means a drug-induced loss of

consciousness during which patients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation, drug-induced depression, or changes in neuromuscular function. Cardiovascular function may be impaired.

(12) "General anesthesia permit" means a permit that was issued by the board prior to February 1, 2011, that authorized the dentist to whom the permit was issued to administer general anesthesia for the practice of dentistry.

(13) "Incident" means dental treatment performed on a patient under minimal sedation, moderate sedation, deep sedation, or general anesthesia with unforeseen complications.

(14) "Incremental dosing" means administration of multiple doses of a drug until a desired effect is reached.

(15) "Minimal sedation" means a drug-induced state, with or without nitrous oxide to decrease anxiety, in which patients respond normally to tactile stimulation and verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are maintained and do not require assistance.

(16) "Moderate enteral sedation" means a drug-induced depression of consciousness through the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(17) "Moderate parenteral sedation" means a drug-induced depression of consciousness that bypasses the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.]

~~(13)(15)~~[(18)] "Moderate sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. **This term includes the enteral administration of drugs exceeding the maximum recommended dose during a single appointment.**

~~(14)(16)~~[(19)] "Nitrous oxide sedation" or "N2O sedation" means a technique of inhalation sedation with nitrous oxide and oxygen.

~~(15)(17)~~ "Operating dentist" means a licensed dentist with primary responsibility for providing dental care **during a procedure while a separate qualified dentist or independently practicing qualified anesthesia provider administers minimal, moderate, or deep sedation, or general anesthesia.**

~~(18)~~[(20)] "Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal (GI) tract, that is, through an intramuscular, intravenous, intranasal, submucosal, subcutaneous, intraosseous administration.]

~~(16)(19)~~ "Pediatric patient" means a patient twelve (12) years of age or younger.

(17) "Qualified anesthesia provider" means a licensed anesthesiologist, Certified Registered Nurse Anesthetist, or dentist with an applicable sedation permit.

(18)(20) "Qualified dentist" means a licensed dentist with an applicable sedation permit. A qualified dentist can also be an operating dentist if they fulfill the requirement of subsection (15) of this section [the appropriate training and permits to provide sedation and anesthesia in compliance with state rules and regulations].

(19)(21) "Time-oriented anesthesia record" means documentation at appropriate time intervals of drugs administered, doses of drugs administered, and physiologic patient data obtained during patient monitoring. [

(21) "Pediatric Advanced Life Support" or "PALS" means a

certification that an individual has successfully completed a pediatric advanced life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:532.

(22) "Sedation" means the reduction of stress or excitement by the administration of a drug that has a soothing, calming, or tranquilizing effect.]

(20) "Trained individual" means personnel with an active certification in Basic Life Support for Healthcare Providers, who and] has been trained in monitoring EKG's, pulse oximetry, blood pressures, airway management, and capnography. Training, whether formal or internal, is[shall be] documented in employee records.

Section 2. Scope and Applicability. (1) The board shall be [Statement of Policy. (1) The administration of local anesthesia, sedation, and general anesthesia is an integral part of dental practice. The board is]committed to the safe and effective use of sedation and anesthesia by licensed.[these modalities by appropriately] educated, and trained dentists.

(2) Because large doses of local anesthetics, especially in combination with sedative agents, carry the risk of central nervous system depression, each licensed dentist shall[The use of local anesthetics is the foundation of pain control in dentistry; dentists must] be aware of the maximum, safe dosage limits for each patient.[Large doses of local anesthetics carry the risk of central nervous system depression, especially in combination with sedative agents.]

(3) Level of sedation shall be[is] independent of the route of administration. Moderate or deep sedation, or general anesthesia, may be achieved via any route of administration.

(4) Because sedation and general anesthesia are a continuum and[,] it is not always possible to predict how an individual patient will respond, each licensed dentist[Practitioners] intending to produce a given level of sedation shall be able to diagnose and manage the physiologic consequences for patients whose level of sedation becomes deeper than initially intended. For all levels of sedation, the qualified dentist shall have the training, skills, drugs, and equipment to identify and manage such an occurrence until either:

(a) Assistance arrives;[,] or

(b) The patient returns to the intended level of sedation without airway or cardiovascular complications.

(5) Because new[New] indications, agents, and techniques [will]lead to changes in anesthesia and sedation practices.[,] the board shall evaluate [such]changes for safety, efficacy, and to what extent [such]changes become accepted practice within the profession of dentistry.

Section 3.[Section 2.] Nitrous Oxide Sedation. (1) Nitrous oxide sedation may be used by a Kentucky-licensed dentist without a [specific] sedation permit or by a Kentucky-licensed dental hygienist who is registered[permitted] to deliver nitrous oxide analgesia under the direct supervision of a dentist as per KRS 313.060(10)[certified to administer block and infiltration anesthesia and nitrous oxide analgesia].

(2) Equipment used in the administration of nitrous oxide sedation shall have functional safeguard measures that:

(a) Limit the minimum oxygen concentration to thirty (30) percent; and

(b) Provide for scavenger elimination of nitrous oxide gas.

(3) The dentist shall:

(a) Ensure[insure] that a patient receiving nitrous oxide is constantly monitored; and

(b) Be present in the office while nitrous oxide is being used.

(4) A Kentucky-registered dental assistant shall not independently administer nitrous oxide sedation, but may initiate nitrous oxide sedation if the dentist is in the office and gives the dental assistant specific instructions regarding the mode of administration and the titration, rate, and dosage of the anesthetic agent[A dental assistant may only deliver nitrous oxide at a rate specified by direct orders of a dentist].

Section 4.[Section 3.] Minimal Sedation[Without a Permit]. (1) A sedation permit shall not be[No license or permit is]

required for a Kentucky-licensed dentist to provide minimal sedation as defined by Section 1(12) of this [Minimal Sedation as described in this administrative regulation].

(2) A patient[Patients] whose only response is reflex withdrawal from repeated painful stimuli shall not be considered to be in a state of minimal sedation.

(3) The enteral administration of drugs exceeding the maximum recommended dose during a single appointment is considered to be moderate sedation, and Section 5 of this administrative regulation shall apply.

(4) Nitrous oxide, if[when] used in combination with a sedative agent, may be considered to produce minimal, moderate, or deep sedation, or general anesthesia.

(5) If more than one (1) drug is administered enterally to achieve the desired sedation effect, with or without the concomitant use of nitrous oxide, Section 5 of this administrative regulation shall apply.

(6) A dentist who administers minimal sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness. The use of the MRD to guide dosing for minimal sedation is intended to create this margin of safety.

(7) If minimal sedation is administered to a patient who is taking another substance known to increase the sedative effects on[properties of] the patient, Section 5 of this administrative regulation shall apply.

(8) An operating dentist shall not be required to complete additional training to administer minimal sedation.

(9) The administration of minimal sedation by another [qualified] dentist or [independently practicing] qualified anesthesia provider shall require the operating dentist to maintain current certification in Basic Life Support for Healthcare Providers.

(10) Clinical guidelines[Guidelines].

(a) Patient history and evaluation[History and Evaluation]. Patients considered for minimal sedation shall be [suitably] evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this evaluation shall consist of a review of the patient's current medical history and medication use. In addition, patients with significant medical considerations (ASA III, IV) shall[should], unless otherwise documented by the provider,[may] require consideration of a consultation with their treating physician prior to being administered minimal sedation.

(b) Pre-operative evaluation and preparation[Operative Evaluation and Preparation].

1. The patient[,], or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

2. Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of minimal sedation.

3. The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, and pulse rate[, and respiration rate] shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

4. Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

5. The patient[,], or the patient's parent, legal guardian, or caregiver, shall be given pre-operative verbal and written instructions regarding the patient's sedation and procedure.

(c) Personnel and equipment requirements[Equipment Requirements].

1. Personnel. All clinical staff participating in the care of a minimally sedated patient shall be certified in[at least one (1) additional person trained in] Basic Life Support for Healthcare Providers[shall be present throughout the administration of minimal sedation, in addition to the operating dentist].

2. Equipment.

a. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

b. All equipment shall be examined for proper performance

prior to each administration of sedation.

c. If inhalation equipment is used, it shall have a fail-safe system that shall be[which is appropriately] examined and calibrated and a functioning device that shall prohibit[which prohibits] the delivery of less than thirty (30) percent oxygen, or a[an appropriately] calibrated and functioning in-line oxygen analyzer with audible alarm.

d. A[An appropriate] scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

3. Monitoring and documentation[Documentation].

a. Monitoring. The[: A qualified] dentist[,], or a[an appropriately] trained individual chosen by the[operating] dentist, shall remain in the treatment room[operating area] during active dental treatment to monitor the patient continuously until the patient meets the criteria for discharge to the recovery area.[The qualified dentist or other individual monitoring the treatment shall be familiar with monitoring techniques and equipment.] The following shall be monitored unless precluded or invalidated by the nature of the patient:

(i)[a.] Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed;[.]

(ii)[b.] Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;[may be clinically useful and shall be considered.]

(iii)[c.] Ventilation. The patient's chest excursions shall be monitored[,], and [their] respirations shall be verified; and[.]

(iv)[d.] Circulation. Blood pressure and heart rate shall be evaluated pre-operatively and post-operatively[. Intraoperative monitoring of blood pressure may be clinically useful and shall be considered.]

b. Documentation. A[An appropriate] sedative record shall be maintained for each patient to whom sedation is administered. The sedative record[which] shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

4. Recovery and discharge[Discharge].

a. Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

b. The dentist or a[A qualified dentist or an appropriately] trained individual chosen by the [operating] dentist shall monitor the patient during recovery until the patient is ready for discharge[by the operating dentist].

c. The dentist shall examine the patient and document[A qualified dentist shall determine and document whether] the patient's level of consciousness, oxygenation, ventilation, and circulation [are satisfactory] prior to discharge.

d. The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(d) Emergency management[Management].

1. If a patient enters a deeper level of sedation than the dentist is qualified to provide, the dentist shall stop the dental procedure until the patient is returned to the intended level of sedation.

2. The operating dentist shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of minimal sedation and patient rescue.

Section 5. Moderate Sedation. (1) A Moderate Sedation Permit issued by the board shall be required for a Kentucky-licensed dentist to administer[The board shall issue a license or permit to a dentist prior to the administration of] moderate sedation as defined by Section 1(13) of this administrative regulation[to a patient].

(2) A dentist who administers moderate sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness.

(3) A qualified dentist shall be aware that repeated dosing of an agent before the effects of previous dosing can be fully appreciated could[may] result in a greater alteration of the state of consciousness than intended. A dentist who administers

moderate sedation shall refrain from administering an additional drug increment before the previous dose has taken full effect.

(4) A patient whose only response is reflex withdrawal from a painful stimulus shall not be considered to be in a state of moderate sedation.

(5) To qualify for a Moderate Sedation Permit, a dentist shall:

(a) Submit an Application for Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Provide documentation that the dentist meets the educational requirements of subsection (6) or (7) of this section.

(6)(5) Education requirements for [adult—]moderate sedation.

(a) To administer moderate sedation to an adult patient, a dentist shall have **current certifications in Basic Life Support for Healthcare Providers and Advanced Cardiac Life Support, and complete[one of the following][successfully completed]:**

1. A comprehensive training program in moderate sedation **that complies with the requirements established[which satisfies the requirements described]** in the Moderate Sedation section of the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students at the time training was commenced; or

2. An advanced education program accredited by the Commission on Dental Accreditation **that[which] provides comprehensive [and appropriate]training necessary to administer and manage moderate sedation commensurate with this administrative regulation.]; and**

3. Current certifications in Basic Life Support for Healthcare Providers, and Advanced Cardiac Life Support, and Pediatric Advanced Life Support.

(b) Any person currently holding a permit to provide adult moderate sedation prior to the effective date of this administrative regulation who fails to meet the requirements of this subsection shall have until December 31, 2023 to comply with the requirements of this subsection. Any valid moderate sedation permits issued prior to this administrative regulation shall remain active until their expiration or renewal date, at which time the requirements of this subsection shall have to be met prior to renewal.

(6) Educational requirements for pediatric moderate sedation.

(a)

(b)[b.] To administer moderate sedation to a pediatric patient, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation **that[which] provides comprehensive [and appropriate]training necessary to administer and manage moderate sedation commensurate with this administrative regulation; and**

2. Current certifications in Basic Life Support for Healthcare Providers **and[, and Advanced Cardiac Life Support and, if administering sedation to pediatric patients,] Pediatric Advanced Life Support.**

(c)[b] The operating dentist or the facility at which the moderate sedation is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified **anesthesia provider[~~dentist~~] to provide moderate sedation.**

(d) Any valid moderate sedation permits issued prior to this administrative regulation shall remain active until their expiration date and shall comply with the requirements of this section, except that[;:] moderate adult enteral and parenteral permit holders shall have until December 31, 2023 to comply with subsection (6)(a)1. and 2. of this section.

(7) Clinical guidelines; patient history and evaluation.

(a)[Guidelines, Patient History and Evaluation] Patients considered for moderate sedation shall be **[suitably]evaluated** prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, and ASA

status.

(b) Patients[In addition, patients] with significant medical considerations (ASA III, IV) shall[should], unless otherwise documented by the provider,[may] require consideration of a consultation with their treating physician prior to being administered moderate sedation.

(8) Pre-operative evaluation and preparation[Operative Evaluation and Preparation].

(a) [Pre-Operative Evaluation and Preparation, 1.]The patient[;] or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

(b)[2.] Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of moderate sedation.

(c)[3.] The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, **and pulse rate[, and respiration rate]** shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

(d)[4.] Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

(e)[5.] The patient[;] or the patient's parent, legal guardian, or caregiver, shall be given pre-operative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ADA Guidelines for the Use of Sedation and General Anesthesia by Dentist, adopted October 2016.

(9) Personnel and equipment requirements[Equipment Requirements].

(a) Personnel. All clinical staff participating in the care of a moderately sedated patient shall be certified in Basic Life Support for Healthcare Providers. **[At least one (1) additional person certified in Advanced Cardiac Life Support shall be present throughout the administration of moderate sedation to an adult patient, in addition to the operating dentist. At least one (1) additional person certified in Pediatric Advanced Life Support shall be present throughout the administration of moderate sedation to a pediatric patient, in addition to the operating dentist.]**

(b) Equipment.

1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system that shall be[which is appropriately] examined and calibrated and a functioning device that shall prohibit[which prohibits] the delivery of less than thirty (30) percent oxygen, or **a[an appropriately] calibrated and functioning in-line oxygen analyzer with audible alarm.**

4. **A[An appropriate] scavenging system shall be used if gases other than oxygen or air are delivered to a patient.**

5. Equipment necessary to establish intravascular or intraosseous access and a defibrillator or automated external defibrillator shall be immediately available until the patient meets discharge criteria.

(10) Monitoring and documentation[Documentation].

(a) Monitoring.

1. If leaving the room, a qualified dentist shall[must] have at least one (1) month of general anesthesia training and shall select a trained individual to continuously monitor the patient; or

2.[Otherwise,] A qualified anesthesia provider shall remain in the treatment room during active treatment until the patient meets the criteria for discharge to the recovery area. The operating dentist shall remain in the operating room to monitor the patient continuously until the patient has recovered to a minimally sedated level. When active treatment concludes and the patient recovers to a minimally sedated level, the dentist, may choose an appropriately

~~trained individual to remain with and continue to monitor the patient until the patient is discharged from the facility. The operating dentist shall not leave the facility until the patient is discharged from the facility.~~

~~(b) The following shall be monitored:~~

~~1. Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed;[;]~~

~~2. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;[;]~~

~~3. Ventilation: The **qualified anesthesia provider [operating dentist]** shall be responsible for the observation of ventilation and breathing by monitoring end tidal CO2 unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions;[;]~~

~~4. Circulation. The **qualified anesthesia provider [operating dentist]** shall continually evaluate blood pressure and heart rate unless invalidated by the nature of the patient and noted in the time-oriented anesthesia record; **and**[;]~~

~~5. The patient's pulse oximetry, heart rate, end tidal CO2, **[respiratory rate]**, blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.~~

~~[6. The operating dentist shall consider the continuous ECG monitoring of a patient with significant cardiovascular disease.]~~

~~(c) Documentation. **A [An appropriate]** sedative record shall be maintained for each patient to whom sedation is administered. **The sedation record [which]** shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.~~

~~(11) Recovery and **discharge [Discharge]**.~~

~~(a) Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.~~

~~(b) **When active treatment concludes and the patient recovers to a minimally sedated level, the qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall remain with and continue to monitor the patient until the patient is discharged from the facility. The qualified anesthesia provider shall not leave the facility until the patient is discharged.**~~

~~(c) **The qualified anesthesia provider or a [The operating dentist or appropriately]** trained individual chosen by the qualified anesthesia provider shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.~~

~~(d) **The qualified anesthesia provider [(e) A qualified dentist]** shall determine and document **[whether]** the patient's level of consciousness, oxygenation, ventilation, and circulation **[are satisfactory]** prior to discharge.~~

~~(e[d]) The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.~~

~~(f) **Because re-sedation could occur after the effects of a reversal agent have waned, [(e)] If a pharmacological reversal agent is administered before the patient's discharge criteria have been met, the patient's escort shall be notified of the risk of re-sedation [patient shall be monitored for a longer period than usual before discharge, since re-sedation may occur once the effects of the reversal agent have waned].**~~

~~(12) Emergency management [Management].~~

~~(a) If a patient enters a deeper level of sedation than the qualified anesthesia provider [dentist] is qualified to provide, the procedure shall stop [dentist shall stop the dental procedure] until the patient is returned to the intended level of sedation.~~

~~(b) The **[operating dentist] [qualified anesthesia provider]** shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of moderate sedation and patient rescue.~~

Section 6. Deep Sedation and General Anesthesia. (1) A Deep Sedation and General Anesthesia Permit issued by the board shall be required for a Kentucky-licensed dentist to administer "deep sedation" and "general anesthesia" as defined by Section 1(6) and (8) of this administrative regulation.

(2) To qualify for a deep sedation and general anesthesia permit, a dentist shall:

(a) Submit an Application for Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Provide documentation that the dentist meets the educational requirements of subsection (3) of this section [The board shall issue a license or permit to a dentist prior to the administration of moderate sedation to a patient].

(3) Education requirements.

(a) To administer deep sedation or general anesthesia, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation, which provides comprehensive [and appropriate] training necessary to administer and manage deep sedation or general anesthesia; and

2. Current certifications in [the following]:

a. Basic Life Support for Healthcare Providers;

b. [and] Advanced Cardiac Life Support if administering sedation to adult patients; and

c. Pediatric Life Support [;] if administering sedation to pediatric patients [; Pediatric Advanced Life Support].

(b) The operating dentist or the facility at which deep sedation or general anesthesia is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified anesthesia provider [dentist] to provide deep sedation or general anesthesia [moderate sedation, with at least one (1) additional person certified in Advanced Cardiac Life Support or an equivalent].

(4) Clinical guidelines: for patient history and evaluation. Each patient [(3) Clinical Guidelines, Patient History and Evaluation, Patients] considered for deep sedation or general anesthesia shall be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, nothing by mouth status, and ASA status. In addition, patients with significant medical considerations (ASA III, IV) shall [should], unless otherwise documented by the provider, [may] require consideration of a consultation with their treating physician prior to being administered deep sedation or general anesthesia. [moderate sedation. Patients with elevated BMI could [may] be at increased risk for airway associated morbidity, particularly if in association with other factors, such as obstructive sleep apnea.]

(5) [(4)] Pre-operative evaluation and preparation [Operative Evaluation and Preparation].

(a) [Pre-Operative Evaluation and Preparation, 1.] The patient [;] or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

(b) [2.] Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be confirmed [determined] prior to the administration of deep [moderate] sedation or general anesthesia.

(c) [3.] The patient shall be physically examined prior to the administration of deep [minimal] sedation or general anesthesia. Baseline vital signs including body weight, height, blood pressure, blood oxygen saturation, and pulse rate [and respiration rate] shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

(d) [4.] The patient [;] or the patient's parent, legal guardian, or caregiver, shall be given pre-operative verbal and written instructions regarding the patient's sedation and procedure.

including pre-operative fasting instructions based on the ASA Summary of Fasting and Pharmacologic Recommendations.

~~(e)(5.) An intravenous line shall be established and secured throughout the procedure, except for patients with special needs as per subsection (9) provided in subsection (8) of this section.~~

~~(6)(5) Personnel and equipment requirements [Equipment Requirements].~~

~~(a) Personnel. All clinical staff participating in the care of a deeply sedated patient or a patient who has been administered general anesthesia shall be certified in Basic Life Support for Healthcare Providers. [At least one (1) additional person certified in Advanced Cardiac Life Support shall be present throughout the administration of moderate sedation to an adult patient, in addition to the operating dentist. At least one (1) additional person certified in Pediatric Advanced Life Support shall be present throughout the administration of moderate sedation to a pediatric patient, in addition to the operating dentist.]~~

~~(b) A minimum of three (3) individuals shall be present while a patient is being treated with deep sedation or general anesthesia. If [When] a pediatric patient is being treated with deep sedation or general anesthesia, in addition to the operating dentist, a separate qualified anesthesia provider [in addition to the operating dentist,] shall manage the patient's anesthesia unless the anesthesia is performed by an oral and maxillofacial surgeon.~~

~~(c) Equipment.~~

~~1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.~~

~~2. All equipment shall be examined for proper performance prior to each administration of sedation.~~

~~3. If inhalation equipment is used, it shall have a fail-safe system that shall be [which is appropriately] examined and calibrated and a functioning device that shall prohibit [which prohibits] the delivery of less than thirty (30) percent oxygen, or [an appropriately] calibrated and functioning in-line oxygen analyzer with audible alarm.~~

~~4. A [An appropriate] scavenging system shall be used if gases other than oxygen or air are delivered to a patient.~~

~~5. Equipment necessary to establish intravenous access and to monitor end tidal CO2 and auscultation of breath sounds shall be immediately available.~~

~~6. Resuscitation medications, a [medications, an appropriate] defibrillator, [and] equipment and drugs necessary to provide advanced airway management and advanced cardiac life support shall be immediately available.~~

~~(7)(6) Monitoring and documentation [Documentation].~~

~~(a) Monitoring.~~

~~1. If leaving the room, a qualified dentist shall [must] have at least one (1) month of general anesthesia training and shall select a trained individual to continuously monitor the patient; or~~

~~2. [Otherwise,] A qualified anesthesia provider shall remain in the treatment room during active treatment until the patient meets the criteria for discharge to the recovery area [A qualified dentist administering deep sedation or general anesthesia shall remain in the operating room to monitor the patient continuously until the patient meets the criteria for recovery. The qualified dentist shall not leave the facility until the patient is discharged from the facility.]~~

~~(b) [The following shall be monitored:~~

~~1. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated; [.]~~

~~2. Ventilation. For an intubated patient, end-tidal CO2 shall be continually monitored and evaluated. For a non-intubated patient, end-tidal CO2 shall be continually monitored and evaluated unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions; [.]~~

~~3. Circulation. The qualified anesthesia provider [dentist] shall continually evaluate heart rate and rhythm by ECG throughout the procedure, as well as the patient's pulse rate by~~

~~pulse oximetry; [.]~~

~~4. Temperature. A device capable of measuring body temperature shall be readily available during the administration of deep sedation or general anesthesia. Equipment necessary to continually monitor body temperature shall be available and used if [whenever] triggering agents associated with malignant hyperthermia are administered; and [.]~~

~~5. The patient's respiration rate and blood pressure shall be continually monitored and evaluated. [.]~~

~~5(6) The patient's pulse oximetry, heart rate, end tidal CO2, [respiratory rate,] blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.~~

~~(b) Documentation. A [An appropriate] sedative record shall be maintained for each patient to whom sedation is administered. The sedative record [which] shall include the names of all drugs administered, including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.~~

~~(8)(7) Recovery and discharge [Discharge].~~

~~(a) Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.~~

~~(b) When active treatment concludes and the patient recovers to a minimally sedated level, the qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall remain with and continue to monitor the patient until the patient is discharged from the facility. The qualified anesthesia provider shall not leave the facility until the patient is discharged.~~

~~(c) The qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider [The qualified dentist] shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.~~

~~(d) [(e)] The qualified anesthesia provider [dentist] shall determine and document [whether] the patient's level of consciousness, oxygenation, ventilation, and circulation [are satisfactory] prior to discharge.~~

~~(e) [(d)] The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.~~

~~(9) [(8)] Patients with special needs [Special Needs].~~

~~(a) Because many dental patients undergoing deep sedation or general anesthesia are mentally or physically challenged, it is not always possible to administer a comprehensive physical examination or appropriate laboratory tests prior to sedation. In this circumstance, the dentist responsible for administering the deep sedation or general anesthesia shall document the reasons preventing the examination of the patient in the patient's medical record.~~

~~(b) Deep sedation or general anesthesia may be administered without first establishing an indwelling intravenous line if the establishment of intravenous access after deep sedation or general anesthesia is rendered necessary because of poor patient cooperation.~~

~~(10) Emergency management. The qualified anesthesia provider [(9) Emergency Management. The operating dentist] shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of patient rescue and deep sedation or general anesthesia. [~~

~~(1) A permit shall not be required for a dentist to administer minimal enteral sedation for patients age thirteen (13) and older.~~

~~(2) A dentist who intends to administer minimal sedation shall indicate the intent to administer minimal sedation in the patient's record.~~

~~(3) Medication used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Additional dosing shall be within the MRD limits.~~

~~(4) A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia.~~

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~~(5) Nitrous oxide may be combined with an oral medication. If nitrous oxide is combined with an oral medication, the level of sedation shall be maintained at the level of minimal sedation.~~

~~Section 4. Permit and Location Certificate Required. (1) A dentist shall not administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry unless:~~

~~(a) The dentist holds an appropriate Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit issued by the board; or~~

~~(b) The dentist holds a conscious sedation or general anesthesia permit that shall be converted to a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit at the next license renewal.~~

~~(2) A dentist shall not administer an anesthetic technique under a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia permit issued by the board at a facility unless:~~

~~(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or~~

~~(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.~~

~~(3) A treating dentist who does not hold an anesthesia and sedation permit shall not allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry at a facility owned or operated by the treating dentist unless:~~

~~(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or~~

~~(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.~~

~~Section 5. Classifications of Anesthesia and Sedation Permits. The following permits shall be issued by the board to a qualified licensed dentist:~~

~~(1) Minimal Pediatric Sedation permit that authorizes a dentist to use minimal enteral sedation for patients age five (5) to twelve (12). Medication or medications used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Incremental dosing shall be prohibited. All dosing shall be administered in the dental office. A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia. Nitrous oxide may be combined with an oral medication. If nitrous oxide is combined with an oral medication, the level of sedation shall be maintained at the level of minimal sedation;~~

~~(2) Moderate Enteral Sedation permit that authorizes a dentist to use moderate enteral sedation for patients age thirteen (13) and older;~~

~~(3) Moderate Parenteral Sedation permit that authorizes a dentist to use moderate parenteral sedation for patients age thirteen (13) and older;~~

~~(4) Moderate Pediatric Sedation permit that authorizes a dentist to use moderate sedation by any route of administration for patients age twelve (12) and under; and~~

~~(5) Deep Sedation or General Anesthesia permit that authorizes a dentist to use:~~

~~(a) General anesthesia; or~~

~~(b) Deep sedation.~~

~~Section 6. Qualifications for Obtaining a Minimal Pediatric Sedation Permit. To qualify for a Minimal Pediatric Sedation permit, an applicant shall:~~

~~(1) Submit an Application for Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by 201 KAR 8:520;~~

~~(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and~~

~~(4) Provide proof of successful completion of: (a) a Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage minimal sedation; or~~

~~(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction on pediatric minimal sedation by the enteral route or the combination enteral and nitrous oxide route.~~

~~Section 7. Qualifications for Obtaining a Moderate Enteral Sedation Permit. To qualify for a Moderate Enteral Sedation permit, an applicant shall:~~

~~(1) Submit an Application for Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by 201 KAR 8:520;~~

~~(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and~~

~~(4) Provide proof of successful completion of: (a) A Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate sedation; or~~

~~(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction plus management of at least ten (10) adult case experiences by the enteral route or the combination enteral and nitrous oxide route. These ten (10) cases shall include at least three (3) live (on sight) clinical dental experiences managed by participants in groups that shall not exceed five (5) individuals. These three (3) live (on-sight) experiences may be obtained by observing a permit level dentist in his or her office, and the remaining cases may include simulations and video presentations and shall include at least one (1) experience in returning a patient from deep to moderate sedation.~~

~~Section 8. Qualifications for Obtaining a Moderate Parenteral Sedation Permit. To qualify for a Moderate Parenteral Sedation permit, an applicant shall:~~

~~(1) Submit an Application for Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by 201 KAR 8:520;~~

~~(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and~~

~~(4) Provide proof of successful completion of: (a) A CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate parenteral sedation; or~~

~~(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of sixty (60) hours of didactic instruction plus management of at least twenty (20) patients per course participant in moderate parenteral sedation techniques.~~

~~Section 9. Qualifications for Obtaining a Moderate Pediatric Sedation Permit. To qualify for a Moderate Pediatric Sedation permit, an applicant shall:~~

~~(1) Submit an Application for Sedation or Anesthesia Permit;~~

~~(2) Pay the fee required by administrative regulation;~~

~~(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and~~

~~(4) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer~~

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and manage moderate sedation for patients age twelve (12) and under.

Section 10. Qualifications for Obtaining a Deep Sedation or General Anesthesia Permit. To qualify for a Deep Sedation or General Anesthesia permit, an applicant shall:

- (1) Submit an Application for Sedation or Anesthesia Permit;
- (2) Pay the fee required by administrative regulation;
- (3) Hold current certification in either ACLS or PALS; and (4) Provide proof of successful completion of:

(a) A board-approved Accreditation Council for Graduate Medical Education (ACGME) accredited post doctoral training program in anesthesiology which affords comprehensive and appropriate training necessary to administer deep sedation and general anesthesia;

(b) A board-approved nurse anesthesia program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs that affords comprehensive and appropriate training necessary to administer deep sedation and general anesthesia;

(c) Successful completion of a minimum of two (2) years advanced clinical training in anesthesiology from a Joint Commission on Accreditation of Healthcare Organization (JCAHO) accredited institution that meets the objectives set forth in part two (2) of the American Dental Association's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry; or

(d) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage deep sedation and general anesthesia.]

Section 7.[14-] Multiple Application Levels. A dentist [Permitted. Dentists] with the required education and training to provide[for] more than one (1) level of sedation may mark the[their] levels of qualification on the Application for Sedation or Anesthesia Permit[, based on the requirements of Sections 6 through 10 of this administrative regulation].

Section 8. Renewal of a Sedation or Anesthesia Permit. (1) A qualified dentist applying for renewal of an active permit to administer moderate sedation, or deep sedation or general anesthesia shall:

(a) Submit an Application for Renewal of Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520;

(c) Complete at least four (4) hours of clinical continuing education related to sedation or anesthesia in a classroom setting during the two (2) year term of the permit; and

(d) Maintain ACLS or PALS certification as required by Sections 5 and 6 of this administrative regulation.

(2) The continuing education requirements of this section shall be in addition to the license renewal requirements of 201 KAR 8:532.

(3) Unless properly renewed, each permit issued under this administrative regulation shall expire on December 31 of odd-number years.

Section 9[9].[12-] Location Requirement. A dentist holding a [Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia] permit in accordance with[under] this administrative regulation shall advise the board of the name and address of each facility where the dentist intends to or has ceased to administer anesthesia and sedation by submitting the **Sedation or Anesthesia [and Sedation] Permit Location Notification Form** within ten (10) business days of the change.

Section 10[9].[13- Anesthesia and Sedation] Facility Certificates. (1) The owner or operator of a facility shall obtain an **Anesthesia or Sedation Facility Certificate[a facility certificate]**[an Anesthesia and Sedation Facility Certificate] from the board for any location at which[:

- (a) a dentist holding a sedation or[Minimal Pediatric

Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or] general anesthesia permit provides moderate sedation, deep sedation, or general anesthesia. A facility certificate **shall not be[is not]** required for minimal sedation or nitrous oxide sedation alone.[may administer anesthesia and sedation under the permit; or

(b)](2) A facility certificate shall be required if a dentist allows an independently practicing qualified anesthesia provider to administer sedation or general anesthesia in a dental office[The treating dentist may allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry].

(3)](2) A facility owner or operator desiring to obtain an Anesthesia or[and] Sedation Facility Certificate shall:

(a) Submit an Application for **Sedation or Anesthesia[a] Facility Certificate**[an Anesthesia and Sedation Facility Certificate]; and

(b) Pay the fee required by 201 KAR 8:520.]; and

(c) Attest that the facility meets the requirements of this administrative regulation][Successfully pass a facility inspection as outlined in Section 14 of this administration. (3) A dentist currently in an advanced training course for sedation may request the Board of Dentistry complete a Sedation Facility Inspection prior to completion of the course].

(4)](4) The owner or operator of a facility shall not allow an individual to administer anesthesia or sedation unless the individual is permitted to do so **as established by[under]** this administrative regulation.

(5)](5) The owner or operator of a facility shall maintain for **at least seven (7)[five (5)]** years, for inspection by the board, the name and license number of each dentist or independently practicing qualified anesthesia provider[, physician anesthesiologist, or certified registered nurse anesthetist] who has administered anesthesia or moderate sedation at that location.

(6)](5) The owner or operator of a facility shall ensure that the facility remains **[properly]** equipped and staffed for the duration of time that moderate sedation, deep sedation, or general anesthesia is provided at the facility. [(6) The owner or operator of a facility shall ensure that the facility:

(a) Remains properly equipped in accordance with Section 14 of this administrative regulation; and

(b) Remains properly staffed in accordance with Section 15 of this administrative regulation.]

(7)](7) In addition to the requirements contained in subsection (6) of this section,] The owner or operator of a facility shall ensure that the facility has **[appropriate]** nonexpired emergency and sedation medications.

Section 11[10]. Renewal of Facility Certificate. (1) **All active[Active] facility certificates [issued prior to the effective date of this administrative regulation] shall expire on December 31 of odd-numbered years [the second year following the date of issuance].**

(2) Any valid[new] facility certificates issued prior to this administrative regulation shall remain active until their original expiration date, at which time the requirements of this regulation shall have to be met prior to renewal[on December 31, 2021 remain active for a period of two (2) years].

(3) To renew a facility certificate, the owner or operator shall:

(a) **Submit an[a completed and signed] Application for Renewal of Sedation or Anesthesia Facility Certificate; and**

(b) Pay the fee required by 201 KAR 8:520]; and

(c) Attest that the facility [meets] the requirements of this administrative regulation].

Section 12[11].[14-] Facility[Inspection] Criteria. (1) To qualify for **a facility certificate[an Anesthesia and Sedation Facility Certificate]**, the owner or operator of a facility shall attest **in the Application for Sedation or Anesthesia Facility Certificate**

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that the facility has ~~the following~~ pass an evaluation of facility equipment, medications, and clinical records.

(a) The following shall be provided by the facility to qualify:

~~(a)[1-] An oxygen and gas delivery system with fail-safe backup, backup system fail-safe;~~[2- Gas storage facility;]

~~(b)[3-] A safety indexed gas system;~~

~~(c)[4-] A suction and backup system;~~

~~(d)[5-] An auxiliary lighting system;~~

~~(e) An operating~~[6- Suitability of operating] room to include:

1. ~~At~~~~a. Size, which shall be at~~ a minimum, ten (10) feet by eight (8) feet or eighty (80) square feet in size;

2. ~~b. An~~ operating primary light source and secondary portable back-up source, unless ~~a~~ back-up generator is available; and

3. ~~c. Accessibility by emergency medical staff;~~

~~(d)[7-] A~~ recovery area, including oxygen, suction, and ~~visual and~~ electronic monitoring, which may ~~be a part of~~~~include~~ the operating room;

~~(g)[8-] Preoperative medical history and physical evaluation form; and~~

~~(h)[9-] Anesthesia and monitoring equipment checked to ensure~~~~insure proper~~ working order ~~and calibration, if applicable.~~

(2) The following shall be maintained in ~~proper~~ working order by the facility or by the qualified individual administering sedation or anesthesia at or on behalf of the facility:~~(b) The following shall be provided by the facility or by an individual listed in Section 22 of this administrative regulation;~~

~~(a)[1-] [Appropriate] Drugs for each procedure, all of which shall be unexpired, including reversal agents and emergency medications;~~

~~(b)[2-] [Appropriate] Devices to maintain an airway with positive pressure ventilation;~~

~~(c)[3-] Anesthesia records, including monitoring and discharge records~~~~and a check sheet.~~

a. The check sheet shall be signed by the provider and the dentist and placed in each record.

b. If the dentist is the provider, only the dentist's signature shall be required;

~~(d)[4-] Monitoring equipment, including pulse oximeter, blood pressure monitor, and end tidal CO2 monitor. An electrocardiogram (EKG) shall be required for facilities providing deep sedation or general anesthesia;~~

~~(e) Defibrillator or automated external defibrillator (AED); and~~

~~(f) Precordial stethoscope or pretracheal stethoscope for deep sedation or general anesthesia in pediatric patients,~~~~and blood pressure monitoring;~~

5. Electrocardiogram (EKG);

a. May be present for use by Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, and Moderate Pediatric Sedation permit holders for patients with significant cardiac history; and

b. Shall be present for use by Deep Sedation or General Anesthesia permit holders;

6. Defibrillator or automated external defibrillator (AED) for moderate and Deep Sedation or General Anesthesia permits; and

7. For deep sedation or general anesthesia in pediatric patients:

a. A precordial stethoscope; or

b. A pretracheal stethoscope.

(2) During a facility inspection, inspectors shall:

(a) Examine the facility's equipment to determine if it is in proper working order;

(b) Determine if appropriate emergency drugs are present; and

(c) Determine if emergency drugs are nonexpired.

Section 15. Inducing a Level of Sedation for a Patient. (1) Administration of minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient requires at least the following appropriately trained individuals:

(a) The treating dentist;

(b) An individual trained and competent in basic life support

(BLS) or its equivalent to assist the treating dentist; and

(c) Another individual trained and competent in BLS or its equivalent in close proximity to assist if needed.

(2) A dentist administering minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient shall not leave the site until the patient:

(a) Is conscious;

(b) Is spontaneously breathing;

(c) Has stable vital signs;

(d) Is ambulatory with assistance; and

(e) Is under the care of a responsible adult.

(3) A treating dentist who allows a physician, another dentist, or certified registered nurse anesthetist to administer minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia under Section 22 of this administrative regulation shall ensure that the physician, dentist, or certified registered nurse anesthetist shall not leave the site until the patient:

(a) Is conscious;

(b) Is spontaneously breathing;

(c) Has stable vital signs;

(d) Is ambulatory with assistance; and

(e) Is under the care of a responsible adult.

Section 16. Conscious Sedation Permits and General Anesthesia permits. (1) A dentist who holds a current general anesthesia permit may continue to administer anesthesia and sedation consistent with a Deep Sedation or General Anesthesia permit until the expiration date of the permit.

(2) A dentist who holds a current conscious sedation permit and meets the requirements of Section 9(4) of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Pediatric Sedation permit until the expiration date of the permit.

(3) A dentist who holds a current conscious sedation permit and meets the requirements of Section 8 of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Parenteral Sedation permit until the expiration date of the permit.

(4) During the license renewal process, current general anesthesia permit holders shall convert the permit to a Deep Sedation or General Anesthesia permit.

(5) During the license renewal process, current conscious sedation permit holders shall convert the permit to a minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, or moderate pediatric sedation permit.

(6) A dentist who currently practices enteral sedation without a permit may continue without a permit until January 1, 2012 and shall receive a Moderate Enteral Sedation permit by the submission of:

(a) Twenty-four (24) hours of didactic education plus twenty (20) sedation records documenting their experience; and

(b) Satisfactory completion of an on-site inspection as outlined in Section 14 of this administrative regulation.

Section 17. Issuance and Expiration of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permits.

(1) Once an applicant has met the qualifications for obtaining a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit the board shall issue a permit in sequential numerical order.

(2) Each permit issued under this administrative regulation shall expire on the same date as the permit holder's license to practice dentistry.

Section 18. Renewal of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation or General Anesthesia Permits. An individual desiring renewal of an active Minimal

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~~Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation or General Anesthesia permits shall:~~

- ~~(1) Submit a completed and signed Application for Renewal of Sedation or Anesthesia Permit;~~
- ~~(2) Pay the fee required by 201 KAR 8:520; and~~
- ~~(3) Provide evidence to the board that the applicant meets the continuing education requirements outlined in Section 19 of this administrative regulation.] [~~

~~**Section 13. Continuing Education Requirements for Renewal of a Permit. A qualified dentist applying for renewal of an active permit to administer moderate or deep sedation or general anesthesia shall:**~~

~~**(1) Complete at least four (4) hours of clinical continuing education related to sedation or anesthesia in a classroom setting during the two (2) year term of the permit; and**~~

~~**(2) Maintain ACLS or PALS certification as required by Sections 5 and 6 of this administrative regulation.] [**~~

~~Continuing Education Requirements for Renewal of a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia Permit.]~~

~~(1) An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, or Moderate Pediatric Sedation permit shall:~~

~~(a) Complete at least six (6) hours of clinical continuing education related to sedation or anesthesia in a classroom setting that includes hands-on airway management during the two (2) year term of the permit; or~~

~~(b) Maintain ACLS or PALS certification.~~

~~(2) An individual desiring renewal of an active Deep Sedation or General Anesthesia permit shall:~~

~~(a) Complete not less than four (4) hours of on-sight clinical continuing education related to sedation or anesthesia during the two (2) year term of the permit; and~~

~~(b) Maintain ACLS or PALS certification.~~

~~(3) Continuing education required by this administrative regulation shall:~~

~~(a) Not be used to satisfy other continuing education requirements; and~~

~~(b) Be in addition to other continuing education requirements of 201 KAR 8:532.~~

~~Section 20. Facilities Inspected Prior to February 1, 2011. A facility owner or operator desiring to obtain an Anesthesia and Sedation Facility Certificate for a facility which passed an inspection by the board prior to February 1, 2011 shall provide proof to the board of having passed a facility inspection for the purpose of issuing a conscious sedation or general anesthesia.~~

~~Section 21. Issuance of an Anesthesia and Sedation Facility Certificate. Once an applicant has met the qualifications for obtaining an Anesthesia and Sedation Facility Certificate the board shall issue a certificate in sequential numerical order.~~

~~Section 22. Administration by a Physician Anesthesiologist, Dentist, or Certified Registered Nurse Anesthetist at the Facility of a Treating Dentist.~~

~~(1) A treating dentist may allow at his or her dental facility, administration of sedation or anesthesia by a:~~

- ~~(a) Kentucky-licensed physician anesthesiologist or a Kentucky-licensed Certified Registered Nurse Anesthetist; or~~
- ~~(b) Dentist who holds an anesthesia and sedation permit.~~

~~(2) Administration by an individual listed in subsection (1)(a) of this section shall:~~

~~(a) Comply with this administrative regulation; and~~

~~(b) Not require board review.~~

~~(3) Nothing in this section shall preclude a dentist from working with a Kentucky-licensed physician anesthesiologist or a Kentucky-licensed Certified Registered Nurse Anesthetist in an ambulatory care center or hospital.]~~

~~Section 13[14][23]. Morbidity and Mortality Incident Reports.~~

~~(1) A dentist shall report to the board, in writing, any death caused~~

~~by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within seven (7) days after the death[its occurrence].~~

~~(2) A dentist shall report to the board, in writing, any incident that resulted in hospital in-patient admission or emergency room visit caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within thirty (30) days after the hospitalization or emergency room visit[its occurrence].~~

~~(3) The written report to the board required in subsections (1) and (2) of this section shall include:~~

~~(a) The date of the incident;~~

~~(b) The name, age, and address of the patient;~~

~~(c) The patient's original complete dental records;~~

~~(d) The name and permit[license] number of the dentist[licensee] and the name and address of all other persons present during the incident;~~

~~(e) The address where the incident took place;~~

~~(f) The preoperative physical condition of the patient;~~

~~(g) The type of anesthesia and dosages of drugs administered to the patient;~~

~~(h) The techniques used in administering the drugs;~~

~~(i) Any adverse occurrence including:~~

~~1. The patient's signs and symptoms;~~

~~2. The treatment instituted in response to adverse occurrences;~~

~~3. The patient's response to the treatment; and~~

~~4. The patient's condition on termination of any procedures undertaken; and~~

~~(j) A narrative description of the incident including approximate times and evolution of symptoms.~~

~~(4) The duties established[outlined] in this section shall apply to every dentist who administers any type of sedation or anesthesia.~~

~~Section 14[15][24]. Registered Dental Assistant Duties while Working [permitted when working] with Sedation Permit Holders[holders]. A registered dental assistant working with a qualified dentist administering sedation or anesthesia in accordance with[under] this administrative regulation may, under direct supervision:~~

~~(1) Apply noninvasive monitors on the patient;~~

~~(2) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative, and post-operative (recovery) phases of treatment;~~

~~(3) Report monitoring parameters at pre-determined intervals, and if[to the operating dentist on a periodic basis and when] changes in monitored parameters occur;~~

~~(4) Record vital sign measurements in the sedation record;~~

~~(5) Establish and remove intravenous lines if the registered dental assistant has completed training in intravenous access;~~

~~(6) Assist in the management of a patient emergency; and~~

~~(7) Administer medications into an existing intravenous line upon the verbal order and direct supervision of a qualified dentist in accordance with this administrative[under this] regulation.~~

~~Section 15[16]. Administration by [an Independently Practicing]Qualified Anesthesia Provider. (1) An operating dentist may authorize[permit] the administration of sedation or anesthesia by a qualified anesthesia provider];~~

~~(a) Kentucky-licensed independently practicing qualified anesthesia provider; or~~

~~(b) Kentucky-licensed dentist qualified to administer sedation or anesthesia].~~

~~(2) The administration of anesthesia or sedation by an individual established[listed] in subsection (1) of this section shall:~~

~~(a) Comply with the requirements of this administrative regulation; and~~

~~(b) Not require board review prior to the administration of sedation or anesthesia.~~

(3) Nothing in this section shall preclude a dentist from working with a Kentucky-licensed independently practicing qualified anesthesia provider to provide care in an ambulatory care center or hospital.

(1) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia permit holders may, under direct supervision:

(a) Apply noninvasive monitors;

(b) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative and post-operative (recovery) phases of treatment;

(c) Report monitoring parameters to the operating dentist on a periodic basis and when changes in monitored parameters occur;

(d) Record vital sign measurements in the sedation record; and

(e) Remove IV lines (Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders only).

(2) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders, may under direct supervision assist in the management of emergencies.

(3) A registered dental assistant working with Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders may, under direct supervision:

(a) Administer medications into an existing IV line upon the verbal order and direct supervision of a dentist with a Moderate Parenteral Sedation, Moderate Pediatric or Deep Sedation or General Anesthesia permit; and

(b) Establish an IV line under direct supervision if they have completed a course approved by the Board of Dentistry in intravenous access.]

Section 16[25]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Sedation or Anesthesia Permit", **March 2020[February 2014]**;

(b) "Application for Sedation or Anesthesia Facility Certificate", **March 2020[February 2014]**; and

(c) "Sedation or Anesthesia Permit Location Notification Form", **March 2020[February 2014]**.

(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
Kentucky Board of Dentistry
(As Amended at ARRS, June 9, 2020)

201 KAR 8:590. Teledentistry.

RELATES TO: KRS 313.101(11), 313.021(1)(c), 313.060(9), 422.317, 42 U.S.C. 1320d-2 – 1320d-8

STATUTORY AUTHORITY: KRS 313.021(1)(c), KRS 313.060(8), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)(c) requires[authorizes] the board to [exercise all administrative functions of the Commonwealth in the regulation of the profession of dentistry, and to]promulgate administrative regulations for any license or registration the

board creates[to carry out the provisions of the chapter]. KRS 313.060(8) and (9) require the board to promulgate administrative regulations to provide for the practice of teledentistry in the Commonwealth of Kentucky. This administrative regulation establishes requirements and procedures for the practice of teledentistry.

Section 1. Definition. "Teledentistry" means the use of electronic and digital communications to provide [and deliver]dentistry and dental hygiene-related information and services.

Section 2. Practice of Teledentistry.

(1) To deliver teledentistry services in Kentucky, one shall have[must hold] a current, valid dental or dental hygiene license issued by the Board of Dentistry. The practice of dentistry shall occur[occurs] where the patient is located at the time teledentistry services are initiated.

(2) This administrative regulation shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting[,] or in a manner[,] not authorized by KRS Chapter 313[Law: Licensees delivering teledentistry services shall comply with all rules of professional conduct and state and federal statutes relevant to dentistry and dental hygiene]. Teledentistry encounters shall be held to the same standard of care as a traditional in-person patient encounter.

(3)(a) A patient shall only[may] be treated via teledentistry by:

1.[(a)] A Kentucky licensed dentist; or

2.[(b)] A Kentucky licensed dental hygienist who is supervised by, and has delegated authority from, a Kentucky licensed dentist.

(b)[(c)] Any individual may provide any photography or[and/or] digital imaging to a Kentucky licensed dentist or Kentucky licensed dental hygienist for the sole and limited purpose of screening, assessment, or[and/or] examination. Anyone providing [such]photography or[and/or] digital imaging to a Kentucky licensed dentist or Kentucky licensed dental hygienist shall comply with the[must follow the] same standards required for the recording of [such] photography or[and/or] digital imaging in accordance with[and are limited by] KRS 313.010(11).

(4) A licensee using teledentistry [services]in the provision of dental services to a patient shall [take appropriate steps to]establish the licensee-patient relationship and conduct an evaluation[all appropriate evaluations] and history of the patient.

Section 3. Informed Consent. A licensee shall, to the extent possible:

(1) Confirm the identity of the requesting patient;[,]

(2) Verify and authenticate the patient's health history;

(3) Disclose the licensee's identity, applicable credentials, and contact information, including a current phone number;[,]

(4) Obtain an [appropriate]informed consent from the requesting patient after disclosures have been made regarding the delivery models and treatment methods and limitations, to include any special informed consents regarding the use of teledentistry services. At a minimum, the informed consent shall inform the patient or legal guardian and document acknowledgment of the risk and limitations of:

(a) The use of electronic and communications in the provision of care;

(b) The potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care;

(c) The potential disruption of electronic and digital communication in the use of teledentistry; and

(d) The types of activities permitted using teledentistry services;

(5) Inform[(6)] the patient or legal guardian[guardian's understanding] that it is the role of the licensee to determine whether the condition being diagnosed or treated is appropriate for a teledentistry encounter;

(6) State the[(7)-A] requirement for explicit patient or legal

guardian consent to forward patient-identifiable information to a third party; and

~~(7) Provide to the patient[(8) The]~~ contact information for the Kentucky Board of Dentistry and a description of, or link to, the patient complaint process.

Section 4. Confidentiality. The licensee shall ensure that any electronic and digital communication used in the practice of teledentistry ~~shall be[is]~~ secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 – 1320d-8, and all other applicable laws ~~and[;]~~ administrative regulations, ~~and guidance~~. ~~Confidentiality shall be maintained through appropriate processes, practices and technology, including the disposal of electronic and digital equipment and data.~~

Section 5. Dental Records.

(1) Any dental record made through teledentistry shall be in compliance with 201 KAR 8:540, Section 2(1) and (2)~~held to the same record retention standards as a record made through a traditional in-person dental encounter~~.

(2) An informed consent obtained in connection with teledentistry services shall be filed in the patient's dental record.

(3) The release of patient records[record] established during the use of teledentistry shall comply with KRS 422.317~~services shall be accessible to both the licensee and the patient or legal guardian, consistent with all established laws and administrative regulations governing patient healthcare records~~.

(4) The licensee shall document or record in the file:

(a) The patient's chief complaint~~presenting problem~~;

(b) The licensee's differential diagnosis~~chief concern~~;

(c) The licensee's recommended treatment plan for the patient~~patient's diagnosis~~;

~~(d) The patient's treatment plan~~; and

~~(d)[(e)]~~ A description of all services provided by teledentistry.

Section 6. Prescribing.

(1) The indication, appropriateness, and safety considerations for each prescription for medication, laboratory services, or dental laboratory services provided through the use of teledentistry services shall be evaluated by the licensee in accordance with 201 KAR 8:540, Section 3~~applicable law and current standards of care, including those for appropriate documentation~~.

~~(2) A licensee's use of teledentistry carries the same professional accountability as a prescription issued in connection with an in-person encounter.~~

~~(2) A licensee who prescribes any kind of analgesic or pain medication as part of the provision of teledentistry services shall comply with all applicable KASPER requirements.~~

Section 7. Representation of Services. A licensee using teledentistry to deliver dental services or who practices teledentistry shall not:

(1) Directly or indirectly engage in false, misleading, or deceptive advertising of teledentistry services; or

(2) Allow fee-splitting for the use of teledentistry services.

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.

BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, June 9, 2020)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.172, 218A.205(3)(a), (b),

314.011(7), ~~[314.011](8)~~, 314.042, 314.193(2), 314.195, 314.196~~], National Transportation Safety Board Safety Recommendation 1-14-1.~~

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS Chapter 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation ~~establishes~~~~establish~~ establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(10).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "Immediate family" means a spouse, parent, child, sibling, parent-in-law, son-in-law, daughter-in-law, brother in-law, sister in-law, step-parent, step-child, step-sibling, or other relative residing in the same residence as a prescribing practitioner.

(5) "KASPER" means the Kentucky All Schedule Prescription Electronic Reporting System established in KRS 218A. 202.

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions ~~established~~~~defined~~ in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

(a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;

(b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;

(c) Neonatal Nursing: Scope and Standards of Practice;

(d) Nursing: Scope and Standards of Practice;

(e) Pediatric Nursing: Scope and Standards of Practice;

(f) Psychiatric- Mental Health Nursing: Scope and Standards of Practice;

(g) Scope of Practice for Nurse Practitioners;

(h) Standards of Practice for Nurse Practitioners;

(i) Scope of Nurse Anesthesia Practice;

(j) Standards for Nurse Anesthesia Practice;

(k) Standards for Office Based Anesthesia Practice;

(l) Standards for the Practice of Midwifery;

(m) Oncology Nursing~~Statement on the~~ Scope and Standards of [Oncology Nursing] Practice~~[- Generalist and Advanced Practice]~~;

(n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education; and

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(c) Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, diagnostic tests, and performing certain procedures that shall be[which are] consistent with the scope and standards of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined by[in] KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the:

1. Name;

2.[,] Practice address;

3.[,] Phone number;

4.[, and] License number of both the advanced practice registered nurse and each physician who is a party to the agreement; and

5.[it shall also include the] Population focus and area of practice of the advanced practice registered nurse.

(b) Pursuant to KRS 314.196(2), an advanced practice registered nurse shall use the Common CAPA-NS form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form.

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the APRN Prescriptive Authority Notification Form.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form.

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall consider[by guided by] the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS, shall obtain a [report all of his or her] United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate and shall report all DEA numbers, including a DEA-X Controlled Substance Registration Certificate, and any change in the status of a certificate [to the board when issued to the APRN] by providing [mailing] a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) [Any change in the status of a DEA Controlled Substance Registration Certificate, including a DEA X Controlled Substance Registration Certificate, shall be reported in writing to the board within thirty (30) days.] An APRN with a CAPA-CS shall register for a master account with the Kentucky All Schedule Prescription Electronic Reporting System (KASPER) prior to prescribing controlled substances. A copy of the registration certificate shall be submitted to the board within thirty (30) days of receipt of confirmation of registration by KASPER.

(5) An APRN shall report any changes to a CAPA-NS or a CAPA-CS [in writing] to the board within thirty (30) days.

(6) If the collaborating physician's license is suspended, the APRN shall follow the procedures established[set out] in KRS 314.196 for a CAPA-NS. The APRN with a CAPA-CS shall cease prescribing controlled substances until the suspension is lifted or a new collaborating physician signs a new CAPA-CS.

(7) An APRN with a CAPA-NS or a CAPA-CS shall report a practice address to the board. A change to the practice address shall be reported to the board within thirty (30) days.

(8) All documents and information required to be reported to the board by this section shall be reported by uploading the

document or information through the board's Web site, kbn.ky.gov, utilizing the tab APRN Update. The board shall not accept documents or information sent in any other format.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except if[when] a CAPA-NS has been discontinued pursuant to KRS 314.042(9) or if the provisions of KRS 314.196(4)(b) apply.

Section 8. The board may make an unannounced visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to APRN with a CAPA-CS, if prescribing a controlled substance. It also applies to the utilization of KASPER.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN'S role and population focus. This section does not alter the prescribing limits established[set out] in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history, including history of substance use, and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric -[psychiatric] mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for available data on the patient and maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian[,]

or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued once[when] the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify and document changes to the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed, including the risk of tolerance and drug dependence with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian[,]

or health care surrogate[, including the risk of tolerance and drug dependence].

(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for the twelve (12) month period immediately preceding the request for available data on the patient[before issuing a new prescription or a refill for a controlled substance]. The APRN shall maintain in the patient's record all KASPER report identification numbers and the date of issuance of each KASPER report or a copy or saved image of the KASPER report[in the patient's record]. If neither an identification number nor an image can be saved to the patient's record as a

result of technical limitations of the APRN's electronic health record system, the APRN shall make a concurrent note in the patient's record documenting the date and time that the APRN reviewed the patient's KASPER report.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, non-cancer pain, the APRN. In addition to the requirements of this section, shall obtain a baseline drug screen and further random drug screens if the APRN:

(a) Finds a drug screen [tə-be] clinically appropriate; or

(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section and KRS 314.011(8)(a) and (b).

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient, and document the information in the patient's medical record. An APRN certified in psychiatric - [psychiatric] mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for available data on the patient and document the data in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;[f:] and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, [or] the patient's legal guardian, or health care surrogate, including the risks[risk] of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to that[the] treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) All KASPER report identification numbers and the date of issuance of each KASPER report.

(11) The requirement to query KASPER shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure off[or] the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately

preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient with[when] submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescriber:

a. Substitutes a controlled substance for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;[f:]

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an established[establish][established] patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) In accordance with 21 C.F.R. 1306.12(b)(1)(iv) - (v), federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not apply to APRNs in this state.

(13) No less than once every six (6) months, an APRN who holds a DEA Controlled Substance Registration Certificate [has prescribed controlled substances] shall review a reverse KASPER report for the preceding six (6) months to determine if[whether] the information contained in KASPER is correct. If the information is incorrect, the APRN shall comply with 902 KAR 55:110 and take the necessary steps to seek correction of the information, by:

(a)[By] First contacting the reporting pharmacy;

(b)[By] Contacting law enforcement if suspected fraudulent activity; or

(c)[By] Contacting the Drug Enforcement Professional Practices Branch, Office of [the] Inspector General, Cabinet for Health and Family Services.

(14) An APRN shall not issue a prescription for hydrocodone combination products for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, except if[with the following exceptions]:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination products is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options that[which] justifies deviation from the three (3) day supply limit on the patient's medical records;

(b) The prescription for hydrocodone combination products is prescribed to treat chronic pain;

(c) The prescription for hydrocodone combination products is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for hydrocodone combination products is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) The prescription for hydrocodone combination products is prescribed as part of a narcotic treatment program licensed by the

Cabinet for Health and Family Services;

(f) The prescription for hydrocodone combination products is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

(g) Hydrocodone combination products are administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

(16) An APRN may prescribe electronically, Electronic prescription shall be as established in~~[pursuant to]~~ KRS 218A.171.

(17) For any prescription for a controlled substance, the prescribing APRN shall discuss with the patient the effect the patient's medical condition and medication could~~[may]~~ have on the patient's ability to safely operate a vehicle in any mode of transportation.

Section 10. Immediate Family and Self-prescribing or Administering Medications. (1) An APRN shall not self prescribe or administer controlled substances~~[to his or her self]~~.

(2) An APRN shall not prescribe or administer controlled substances to his or her immediate family except as established in subsections (3) and (4) of this section~~[provided herein]~~.

~~(3) Immediate family shall include a spouse, parent, child, sibling, parent-in-law, son or daughter-in-law, brother or sister-in-law, step-parent, step-child, step-sibling, or other relative residing in the same residence as the prescribing practitioner.~~

~~(4) An APRN may prescribe or administer controlled substances to an immediate family member:~~

~~(a) In an emergency situation;~~

~~(b) For a single episode of an acute illness through one (1) prescribed course of medication; or~~

~~(c) In an isolated setting, if~~[when]~~ no other qualified practitioner is available.~~

~~(4)(5)(a) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsections (3)(4)(a) or (b) of this section shall document all relevant information and notify the appropriate provider.~~

~~(b) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsection (3)(4)(c) of this section shall maintain a provider-practitioner relationship and appropriate patient records.~~

Section 11. Incorporation by Reference. (1) The following material is incorporate~~[incorporated]~~ by reference:

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2017 Edition, American Association of Critical-Care Nurses;

(b) "ACCN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/ National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/ Society of Pediatric Nursing/ National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing: Scope and Standards of Practice", 2014, American Nurses Association/ American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2019 [2015] Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2019 [2013] Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2019 [2013] Edition, American Association of Nurse Anesthetists;

(k) "[Standards for]Office Based Anesthesia[Practice]", 2019 [2018] Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery", 2011 Edition, American College of Nurse Midwives;

(m) "Oncology Nursing Scope and Standards of Practice~~[Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice]~~", 2019 [2013] Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

(o) "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives", 2012 [2014] Edition, American College of Nurse Midwives;

(p) "Standards for Professional Nursing Practice in the Care of Women and Newborns", 2019 Edition, Association of Women's Health, Obstetric and Neonatal Nurses;

(q) "APRN Prescriptive Authority Notification Form", 6/2018, Kentucky Board of Nursing; and

(r)~~(q)~~ "Common CAPA-NS Form", 6/2015, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

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BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, June 9, 2020)

201 KAR 20:162. Disciplinary proceedings.

RELATES TO: KRS Chapter 13B, 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS 314.091(8), 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.091(2) requires that an administrative hearing for the denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse be conducted in accordance with KRS Chapter 13B. KRS 314.091(8) authorizes the board, by administrative regulation, to provide for the recovery of costs of an administrative hearing. This administrative regulation establishes procedures for conducting an administrative hearing relating to disciplinary action.

Section 1. An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Composition of the Hearing Panel.

(1)(a) Except as established~~[provided]~~ in paragraph (b) of this subsection, a disciplinary action shall be heard by a hearing panel consisting of two (2) members of the board, one (1) of whom~~[which]~~ shall be a registered nurse, and a hearing officer, who shall be:

1. An assistant attorney general; or

2. Other attorney appointed~~[designated]~~ by the board.

(b) A hearing officer and one (1) member of the board may conduct a hearing for consideration of:

1. Reinstatement of a revoked or suspended license; or

2. Removal of a license from probationary status.

(2) A board member shall not sit on a panel or participate in the adjudication of a matter in which the member has:

(a) Discussed the merits of the action with agency staff;

(b) Personal knowledge of the facts giving rise to the disciplinary action; or

(c) Participated in the investigation of a disciplinary action.

(3) The hearing shall be transcribed by a court stenographer

or video recorded.

Section 3. Response to Charges. The licensee or applicant shall file with the board a written answer to the specific allegations contained in the notice of charges within twenty (20) days of receipt of the charges. An allegation not properly answered shall be deemed admitted. Failure to file an answer may result in the issuance of a default order pursuant to KRS 13B.080(6). The hearing officer shall for good cause permit the late filing of an answer.

Section 4. Rulings by a Hearing Officer. (1) The hearing officer shall rule upon each objection or motion, including an objection to evidence.

(2) A decision of the hearing officer may be overridden by a unanimous vote of the board members of the hearing panel.

Section 5. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing, the panel shall retire into closed session for purpose of deliberations. Each board member of the panel shall be eligible to cast[have] one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a recommended order, as required by KRS 13B.110(1)[,] that shall be:

- (a) Consistent with the panel's deliberations; and
- (b) Submitted to the full board.

Section 6. Continuances; Proceedings in Absentia. (1) The board shall not postpone a case that[which] has been scheduled for a hearing absent good cause. A request by a licensee or applicant for a continuance shall be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause.

(2) The decision of whether or not to grant a continuance shall be made by the hearing officer.

(3) The burden shall be upon the licensee or applicant to be present at a scheduled hearing.

(4) Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 7. Hearing Costs. (1) If the order of the board is adverse to a licensee or applicant[,], or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314, the board may impose the following costs:

- (a) The cost of stenographic services;
- (b) The cost of the hearing officer as determined by subsection (2) of this section; and
- (c) Other costs listed in subsection (3) of this section as applicable.

(2) The cost of the hearing officer shall be determined as established in paragraphs (a) through (c) of this subsection. The cost of a[follows]:

- (a) [A] Disciplinary hearing shall be \$400 per day;
 - (b) [A] Reinstatement hearing shall be \$350; and
 - (c) [A] Default shall be \$300.
- (3) Other costs may include:
- (a) Expert witness costs, including travel;
 - (b) Travel for other witnesses;
 - (c) Document reproduction costs; and
 - (d) The cost of a certified copy of laboratory testing records. [

(4) In a case of financial hardship, the board may waive all or part of the costs.]

Section 8. Reconsideration of Default Orders. (1) A default order issued by the board may be reconsidered.

(2) The party in default shall submit a written motion to the hearing officer requesting reconsideration.

(3) The hearing officer shall schedule a hearing on the motion for reconsideration. The hearing officer may order that the default

order be set aside if the party in default presents good cause.

(4) If a default order is set aside, the provisions of 201 KAR 20:161 shall apply.

Section 9. Prescribing or Dispensing Controlled Substance Cases. (1) An investigation pertaining to prescribing or dispensing of a controlled substance shall produce a charging decision by the board within 120 days of the receipt of the complaint unless the circumstances of a particular complaint make it impossible to timely produce the charging decision.

(2) The board may hold an investigation pertaining to prescribing or dispensing of a controlled substance in abeyance for a reasonable period of time in order to permit a law enforcement agency to perform or complete essential investigative tasks, following a request by the requesting law enforcement agency.

(3) If an investigation pertaining to prescribing or dispensing of a controlled substance does not produce a charging decision within 120 days of the receipt of the complaint, the investigative report shall plainly state the circumstances of that particular investigation or complaint that made timely production of a charging decision impossible.

Section 10. Change in Licensure Status. (1) Pursuant to the Nurse Licensure Compact, KRS 314.475, if a nurse whose primary state of residence is Kentucky and who holds a Kentucky license with multistate privileges incurs a disqualifying event, the license shall be converted to a single state license valid only in Kentucky.

(2) The disqualifying events that may cause this change in status shall be[are]:

(a) Conviction or found guilty of or entered into an agreed disposition of a felony offense;

(b) Conviction or found guilty of or entered into an agreed disposition of a misdemeanor offense related to the practice of nursing;

(c) Current enrollment[Currently enrolled] in an alternative program; or

(d) [Holds]An encumbered nursing license or privilege to practice due to disciplinary action.

(3)(a) The board shall inform the nurse in writing of its intent to change the status of the Kentucky license.

(b) The nurse may request an administrative hearing on this action. A[Any such] request shall be made in writing to the board within twenty (20) days.

(c) Failure to request an administrative hearing within twenty (20) days[the specified time] shall constitute a waiver of the right to a hearing.

(4) The procedure established[outlined] in this section shall not be[is not] in lieu of but may be in addition to any potential disciplinary action the board may seek based on the disqualifying event.

CONTACT PERSON: Nathan Goldman, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email Ngoldman@ky.gov.

BOARDS AND COMMISSIONS
Board of Nursing
(As Amended at ARRS, June 9, 2020)

201 KAR 20:230. Renewal of licenses.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073
STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes requirements and procedures for the renewal of nursing licenses.

Section 1. Eligibility for Renewal of Licenses. To be eligible

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for renewal of licenses, applicants shall:

- (1) Hold a valid and current license issued by the board;
- (2) Submit a completed application form as required by 201 KAR 20:370, ~~Section 1(1),~~ to the board office, ~~postmarked no later than the last day of the licensure period;~~
- (3) Submit the current fee required by 201 KAR 20:240;
- (4) Have met requirements of 201 KAR 20:215, if applicable;
- (5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation;
- (6) Submit certified copies of any disciplinary actions taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on nursing or other professional or business licenses in other jurisdictions; and
- (7) Have paid all monies due to the board.

Section 2. The licensure period for renewal of licenses shall be as ~~established~~**[specified]** in 201 KAR 20:085.

Section 3. (1) If the application form is submitted on-line, it shall be received by the board prior to midnight on the last day of the licensure period.

(2) If a paper application is submitted, it shall be received no later than the last day of the licensure period. If the application is not received by the board until after the last day of the licensure period, the application shall have been postmarked at least seven (7) days prior to the last day of the licensure period. ~~Otherwise, subsection (4) of this section shall apply.~~

(3) All information needed to determine that an applicant meets the requirements for renewal of licensure shall be received by the board no later than the last day of the licensure period. If the information is not received by the board until after the last day of the licensure period, in order to be considered by the board for the current renewal, the information shall have been postmarked at least seven (7) days prior to the last day of the licensure period. ~~Otherwise, subsection (4) of this section shall apply.~~

(4) Failure to comply with these requirements shall result in the license lapsing. A person whose license has lapsed shall ~~comply with~~**follow the requirements of** 201 KAR 20:225 to reinstate the license.

CONTACT PERSON: Nathan Goldman, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email Ngoldman@ky.gov.

BOARDS AND COMMISSIONS
Board of Nursing
(As Amended at ARRS, June 9, 2020)

201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.475

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for nursing licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

- (1) Submit the completed application form to the board office, ~~as follows:~~
- (a) ~~For~~ RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;
- (b) ~~For~~ RN or LPN Renewal, Annual Licensure Renewal

Application: RN or LPN;

(c) ~~For~~ Licensure or reinstatement as an advanced practice registered nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d) ~~For~~ Renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e) ~~For~~ Licensure as an RN and as an APRN, Application for RN and APRN Licensure;

(f) ~~For~~ Retired licensure status, Application for Retired Status;

(g) ~~For~~ APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky);

(h) ~~For~~ APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License; or

(i) In addition to any other renewal form, for APRN renewal, APRN Practice Data;

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. ~~[A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure shall be postmarked or received by the board no later than the last day for renewal of licensure.~~

~~Section 3.]~~ An application shall lapse and the fee shall be forfeited if the application is not completed ~~as follows:~~

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 3. ~~[4.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Licensure", 1/2016, Kentucky Board of

Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 2/2020 [~~2/2018~~], Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 1/2016, Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 2/2020 [~~2/2018~~], Kentucky Board of Nursing;

(e) "Application for RN and APRN Licensure", 1/2016, Kentucky Board of Nursing;

(f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing;

(g) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 2/2020 [~~5/2018~~], Kentucky Board of Nursing;

(h) "Annual Licensure Renewal Application, APRN with Kentucky RN License", 2/2020 [~~5/2019~~], Kentucky Board of Nursing; and

(i) "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Nathan Goldman, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email Ngoldman@ky.gov.

BOARDS AND COMMISSIONS
Board of Nursing
(As Amended at ARRS, June 9, 2020)

201 KAR 20:410. Expungement of records.

RELATES TO: KRS 314.131

STATUTORY AUTHORITY: KRS 314.131(1), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) and (9) authorize the Board of Nursing to promulgate administrative regulations to establish which disciplinary records may be expunged. This administrative regulation establishes which records may be expunged and the procedure for expungement.

Section 1. Definition. "Expungement" means that all affected records shall be sealed and that the proceedings to which they refer shall be deemed never to have occurred.

Section 2. A nurse whose record has been expunged may state[properly reply] that disciplinary records do not exist upon inquiry.

Section 3. Upon a request from a nurse against whom disciplinary action has been taken, the board shall expunge records relating to the following categories of disciplinary action:

(1) Consent decrees that are at least five (5) years old if all the terms of the consent decree have been met;~~;~~

~~(2) [Agreed orders and decisions that are at least ten (10) years old and which concern one (1) or more of the following categories, if there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met:~~

~~(a) Failed to timely obtain continuing education or AIDS education hours;~~

~~(b) Paid fees that were returned unpaid by the bank; or~~

~~(c) Practiced as a nurse or advanced practice registered nurse without a current license, provisional license, or temporary work permit.~~

~~(3) Agreed orders and decisions that are at least ten (10) years old and that[which] resulted in a reprimand, if there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met; and[.]~~

~~(3)[(4)] Agreed orders and decisions that are at least twenty (20) years old, if there has not been subsequent disciplinary~~

action and all of the terms of the agreed order or decision have been met.

Section 4. The board shall not report cases that have been expunged to another state agency, other board of nursing, or other organization.

CONTACT PERSON: Nathan Goldman, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email Ngoldman@ky.gov.

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(As Amended at ARRS, June 9, 2020)

302 KAR 10:015. Egg grading and classification.

RELATES TO: KRS 260.620

STATUTORY AUTHORITY: KRS 260.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.620 requires the department to establish standards governing eggs offered for sale as graded eggs. This administrative regulation establishes the specifications for the Kentucky consumer grades for shell eggs offered for sale in Kentucky.

Section 1. Shell eggs that are offered for sale in Kentucky:

(1) As graded eggs ~~shall[must]~~ meet or exceed the U.S. standards, grades, and weight classes for shell eggs as listed in [shall be classified using the procedures found] [in] the United States[State] Department of Agriculture, USDA Egg Grading Manual;

(2) As[.] ungraded eggs shall meet the requirements as provided in Section 2 of this administrative regulation;[.] or

(3) Shall be used as nest run eggs that are sent directly to a processor.

Section 2. Ungraded [Unclassified] Eggs. (1) All ungraded [Unclassified] eggs offered for sale in cartons shall[must] be plainly marked "ungraded[Unclassified]" on the carton with letters not less than one-fourth (1/4) inch in height.

(2) All ungraded [unclassified] eggs sold in bulk shall be plainly marked "ungraded[unclassified]" on a placard with letters not less than one-half (1/2) inch, in height.

(3) Eggs that are offered for sale in Kentucky [Unclassified eggs] shall not consist of eggs unfit for human food in whole or in part, addled or moldy, containing black rot, white rot, or blood ring, adherent yolks, bloody whites, incubated beyond the blood ring stage, or consisting to any extent of filthy decomposed substance.

(4) The determination of inedible eggs, the sampling to determine the grade, and the determination of quality with shell, albumen, and yoke specifications shall also be governed by the United States Department of Agriculture, USDA Egg Grading Manual.

Section 3. Incorporation by Reference. (1) [The following material is incorporated by reference:

(a)] "USDA Egg Grading Manual", July 2000, is incorporated by reference. [July 2019][.]

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

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

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DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(As Amended at ARRS, June 9, 2020)

302 KAR 10:025. License application, refusal, revocation, suspension, and appeals.

RELATES TO: KRS 260.550, 260.560, 260.580, 260.600
STATUTORY AUTHORITY: KRS 260.560, 260.580
NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.560 requires the department to administer all provisions and exercise all administrative powers in egg marketing law and authorizes the department to promulgate administrative regulations necessary to carry out the provisions of the egg marketing law. KRS 260.580 requires the department to prescribe reasonable administrative regulations setting up standards governing the form and schedule for processing applications for egg licenses, the determination of whether an application for license shall be granted or denied, and the grounds for the suspension and revocation of a license. This administrative regulation prescribes the grounds for refusal, revocation, or suspension of a license and for placing licensee on a probationary period and the process for appeals.

Section 1. License Application. Persons requiring licensure under KRS 260.550 shall apply to the Kentucky Department of Agriculture using forms Application for Retail License to Handle Eggs or Application for Wholesale Egg Handler License.

Section 2. Refusal to Grant License. An application for a license may be denied if[where] the applicant has previously failed to comply with the egg marketing law as provided in KRS 260.540 to 260.560[Chapter 260] and there is reason to believe that he or she will continue to refuse to comply with the law.

Section 3. Suspension of Licenses. If[When] a licensee is found by an inspector to have sold or have eggs on hand for sale which have not been graded or classified properly, or have sold or offered eggs for sale which have not been handled in [such] a manner as to maintain and preserve the quality and grade in which they were sold or offered for sale, or to have sold, offered or exposed for sale, or have in his or her possession for sale, for human consumption, eggs that are inedible, then the inspector may suspend the egg license of the licensee for a period not to exceed five (5) days. The inspector shall[will] notify the suspended party of his or her administrative appellate rights. The inspector shall[will also] immediately notify the department of his or her action.

Section 4. Probationary Period. If[When] a licensee is found by an inspector to have sold or have eggs on hand for sale which have not been candled, or which are of a lower grade than labeled, or to have sold or offered for sale eggs which have not been handled in [such] a manner as to maintain and preserve the quality and grade in which they were sold or offered for sale, or have in his or her possession for sale, for human consumption, eggs that are inedible, then the inspector may place the licensee on probation for a period not to exceed ten (10) days. The inspector shall[will] notify the licensee of the probation and inform him or her that unless he or she takes necessary corrective measures within this time [or her] period, then his or her license shall[will] be suspended or revoked. The inspector shall[will] immediately notify the department of his or her action.

Section 5. Revocation of Licenses. If[When] a licensee is found by an inspector to have sold eggs or have eggs on hand for sale which have not been candled, or which are of a lower grade than labeled, or has failed to preserve the grade and quality of eggs for sale, or has sold, or offered or exposed for sale, or has in his or her possession for sale for human consumption eggs that are inedible, then the inspector may recommend to the department that the licensee's license be revoked.

Section 6. Appeals. All appeals of KDA determinations shall

be done in accordance with KRS Chapter 13B.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Retail License to Handle Eggs", June 2020 [July 2019]; and

(b) "Application for Wholesale Egg Handler License", June 2020. [July 2019;]

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

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

DEPARTMENT OF AGRICULTURE
Office of the State Veterinarian
(As Amended at ARRS, June 9, 2020)

302 KAR 22:050. Stockyards.

RELATES TO: KRS Chapter 257, 261, 9 C.F.R. 71.10, 71.11, 71.12, 71.19, 86

STATUTORY AUTHORITY: KRS 257.020, 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.020(3) requires the Board of Agriculture to prevent, control, and eradicate any communicable disease of livestock. KRS 257.030(4) authorizes the board to promulgate administrative regulations necessary to administer any provision of KRS Chapter 257. This administrative regulation establishes operational procedures for all stockyards relative to disease control.

Section 1. General Requirements.

(1) All stockyards shall apply annually, on or before July 11th, to the Office of the State Veterinarian (OSV) for a license to operate in accordance with KRS Chapter 261, by submitting the form Application for Kentucky Stockyard Approval.

(2) All stockyards shall be maintained in a workable and [acceptable] sanitary condition. Stockyards shall be inspected as required by the OSV, based on sanitation and safety.

(3) After an occurrence of any infectious, contagious, parasitic, or communicable disease of livestock in a stockyard, exposed facilities capable of transmitting disease shall be cleaned and disinfected according to 9 C.F.R. 71.10, 71.11, and 71.12, and at the direction and under the supervision of the OSV.

(4) Livestock found to be infected and showing clinical or diagnostic symptoms of an infectious, contagious, parasitic, or communicable disease shall, upon recommendation of the market veterinarian or representative of the OSV, be quarantined in an isolated portion of the yards for treatment, additional diagnostic laboratory procedures, disposition to slaughter, or other disposition pursuant to accepted methods of disease prevention and control.

(5) All livestock originating from a quarantined herd or premises shall be sold only with specific written approval from the OSV, for immediate slaughter.

(6) A bill of sale or other document showing the number of livestock, purchaser, and physical description[identifiers required] shall be given to the purchaser. The purchaser shall be responsible for providing any necessary documentation required for movement to[and] the entity hauling livestock away from the facility.

(7) It is the responsibility of the seller[stockyard] to document and identify livestock prior to the sale[exiting the facility] as if they are moving under 9 C.F.R. 86. This shall include official identification for [for all dairy cattle of any age, and] all sexually intact cattle over eighteen (18) months of age, and dairy heifers. Sellers may elect to have the stockyards perform these requirements at the expense of the seller.

(8) Stockyards shall submit to the OSV a Stockyards

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Multipurpose Form within seven (7) calendar days of a sale. Beginning January 1, 2021 the Stockyards Multipurpose Form or the contents therein shall be submitted to the OSV electronically as an excel or other importable format.

(9) The person operating a stockyard shall provide separate pens for isolating animals classed as reactors to brucellosis or any contagious, infectious, or communicable disease.

(a) The pens shall be permanently identified as isolation or quarantine pens, and these words shall be legibly and prominently posted~~[spelled out]~~ on the pen gates.

(b) The pens shall be constructed so as to facilitate easy cleaning and disinfecting after each use.

(c) The pens shall have concrete floors and complete walls with no fences or gates to permit contact with adjacent animals.

(d) Any watering troughs or feed bunks in the isolation or quarantine pens shall be located so that no other livestock in the market can access them at any time.

(e) All diseased animals shall be yarded in the isolation or quarantine pens and shall be sold last.

(f) The animals shall be identified as reactors or diseased animals on the invoices of both the buyer and the seller.

(g) The isolation or quarantine pens shall not be used at any time except for known or suspected contagious, infectious, or communicable disease reactors, or diseased animals.

(h) Livestock from these pens shall move directly to a recognized slaughter establishment~~[,]~~ or to any place that is requested and authorized by the OSV in writing.

(i) ~~[Temporary bangs.]~~ Isolation, or quarantine pens may be used if necessary and if prior approval for the use of the pens has been obtained from an agent of the OSV. Temporary pens shall be identified as isolation or quarantine pens as provided in this section.

(10) The owner operating a stockyard shall provide adequate space, utilities, hot water, and assistance for the market veterinarian to carry out the provisions of this administrative regulation. All licensed Kentucky livestock markets shall comply with this subsection to assist~~provide the following requirements for~~ the market's official market veterinarian. This space shall:

(a) Be constructed and equipped so as to be maintained at room temperature (normal working temperature) in both summer and winter (i.e., heaters and air conditioners);

(b) Contain a sink with hot and cold running water;

(c) Be equipped with a refrigerator in good working condition;

(d) Be constructed so that the market veterinarian shall have sufficient space and privacy to conduct the required tests and fill out the associated records and forms;

(e) Be constructed so that it can be kept clean easily and locked at all times if not in use;

(f) Contain a work counter and sufficient shelf space, cabinets with locks, and storage space to keep forms, ear tags, and other supplies as required by the official market veterinarian in carrying out his or her duties;

(g) Be supplied with adequate artificial light. The electrical wiring shall be adequate to carry at a minimum a centrifuge, electrical refrigerator, and cooling facility and have at least two (2) additional electrical outlets; and

(h) Be located so as to be convenient for the public and the veterinarian ~~[and the public]~~ while conducting his or her duties as the official market veterinarian.

(9) The owner or operator shall provide~~[furnish]~~ and maintain one (1) or more cattle chutes suitable for restraining animals for inspection of any infectious, contagious, or parasitic condition, testing, tagging, branding, and other procedures routinely required in providing livestock sanitary services and identification for movement at stockyards.

Section 2. A Stockyard Must Employ a Market Veterinarian.

(1) The owner or manager operating a stockyard shall arrange for an USDA accredited, Kentucky licensed veterinarian, approved by the State Veterinarian, to be available to carry out the provisions of this administrative regulation.

(a) A veterinarian seeking to be designated as an official market veterinarian shall submit a completed form~~[make~~

~~complete a form]~~ Responsibilities of the Market Veterinarian form.

(b) The official market veterinarian shall be responsible for providing a replacement~~[to replace themselves with another]~~ veterinarian, approved by the State Veterinarian, if he or she finds it necessary to be absent from the market.

(c) The failure or neglect to properly perform any of the responsibilities and duties of the official market veterinarian shall be cause for termination.

(d) The stockyard shall not conduct a sale without an approved official market veterinarian.

Section 3. Veterinary Compensation. The fees shall be deducted from the seller's check or added to the buyer's check, depending upon conditions of sale, and shall be paid to the market veterinarian. Any deductions shall be printed on the sales documents.

Section 4. Veterinary Duties. ~~[The market veterinarian shall perform the following described duties in cooperation with representatives of the department.]~~ The market veterinarian, in cooperation with a representative from the department, shall:

(1) Be available to inspect livestock to clarify the health status of the animals and to qualify the animals for interstate movement;

(2) Collect blood and tissue samples and submit samples to a state-federal approved laboratory to qualify animals for movement as required;

(3) Visually inspect~~[inspection of]~~ livestock for clinical signs of a contagious, infectious, or communicable disease prior to the sale;

(4) Report the presence of any animal showing symptoms suggestive of a reportable disease or any other disease that could~~[may]~~ cause animals to become infected or exposed to a communicable livestock disease;

(5) Forward copies of all forms to the Office of the State Veterinarian. All official forms, certificates, or documents shall be dated and signed by the agent of the market. An official document shall not be presigned by any veterinarian under any circumstance~~u,]~~;

(6) Prevent the transmission of infectious agents to livestock; and;

(7) ~~[Shall]~~ Not resign market duties without written notice to the sale company and the State Veterinarian's office at least ten (10) days prior to resignation.

Section 5. Records Required. The owner or operator shall maintain records of the seller and purchasers of all livestock for at least five (5) years. ~~[Additionally, The stockyard shall copy and maintain all movement, Certificate of Verterinary Inspection (CVI), Owner-Shipper Statement (OSS) or Official Identification (OID) materials that pertained to any sale or transaction, including animals that were returned to the consignor.]~~ These records shall be made available to OSV representatives for inspection upon request during regular business hours.

Section 6. ~~[Cattle and Bison General Requirements.~~

~~(1) Cattle and bison may only enter the premises of the stockyard with a valid CVI or an Owner-Shipper Statement.~~

~~(2) The stockyard shall scan or otherwise record the CVI or OSS at the time of unloading and prior to the sale.~~

~~(3) All sexually intact cattle or bison eighteen (18) months of age or older leaving the stockyards, regardless of change of ownership, and all dairy animals, regardless of age, shall have official identification.~~

~~(4) Any cattle or bison not receiving OID by owner designation as feeders shall be subject to an on farm inspection by the OSV.~~

~~Section 7.]~~ Swine Requirements. A qualifying stockyard shall~~[must]~~ select designation as either an all class swine market~~[,]~~ or a slaughter only market at the time of application.

(1) All class swine stockyards shall:

(a) Maintain well-constructed pens and swine handling

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facilities that are clean and in good repair;

(b) Provide pens surfaced with impervious material for holding and handling all swine;

(c) Provide [satisfactory], well-lighted facilities for inspection and proper restraint;

(d) Clean and disinfect handling and holding pens and alleys ~~[shall be cleaned and disinfected]~~ after being used by each lot of swine. ~~[(e)]~~ Procedures for cleaning and disinfecting shall be performed according to 9 C.F.R. 71.10, 71.11, and 71.12 ~~;~~ ;

(f) Maintain records of origin and the buyer[destination] for all swine entering market and grant federal and state inspectors access to the records. Identification as to farm where farrowed shall be maintained for all feeder pigs and breeding stock and all slaughter swine, which may be diverted for purposes other than slaughter. Records shall be maintained for at least five (5) years;

(g) Place feeding and breeding swine in pens separate and apart from slaughter swine ~~;~~ ;

(h) Deliver sine designated for slaughter ~~All swine designated for slaughter shall be delivered~~ directly to an approved slaughter establishment with no diversion en route. The stockyard shall record the name and information of the slaughter facility destination. ~~[(h)]~~ All swine exiting the stockyard shall require official identification as required in 9 C.F.R. 71.19. The stockyard shall record the owner and premises of destination information ~~;~~ and ~~;~~ ;

~~[(i)]~~ Not permit feeder pigs or breeding swine to remain in the market more than seventy-two (72) hours.

(2) Slaughter swine stockyards

(a) Swine moving interstate to the stockyard shall be identified in accordance with 9 C.F.R. Part 71.

(b) Slaughter swine stockyards shall maintain well-constructed pens and swine handling facilities that are clean and in good repair ~~;~~ ;

(c) Slaughter swine stockyards shall maintain records of origin and destination for all swine entering market and grant federal and state inspectors access to the records. Records shall be maintained for at least one (5) year ~~;~~ ;

(d) Slaughter swine stockyards shall isolate all swine suspected of being affected with or exposed to an infectious disease, promptly notify the state or federal agency, and hold the swine in isolation pending instructions on disposition ~~;~~ and ~~;~~ ;

(e) Slaughter swine stockyards shall clean and disinfect holding and handling pens, alleys, and other facilities used in selling swine according to 9 C.F.R. 71.10, 71.11, and 71.12.

(f) Swine entering onto the stockyards premises shall be only for slaughter, and swine shall not be permitted to leave the stockyard premises for any purpose other than slaughter.

(g) All swine shall be delivered directly to an approved slaughter establishment with no diversion en route, except for swine designated as farm slaughter. The stockyard shall record the name and information of the slaughter facility destination.

(h) The number of swine purchased for farm slaughter for family consumption only shall not exceed six (6) head of animals per premises within twelve (12) months.

(i) Farm slaughter swine shall not be commingled with other swine on the purchaser's premises.

(j) The purchaser of farm slaughter swine shall document slaughter of animals within seven (7) days of purchase. This record shall be made available to the OSV upon request.

(k) All swine exiting the stockyard shall require official identification as required in 9 C.F.R. 71.19. The stockyard shall record the owner and premises of destination information.

Section 7 ~~[8.]~~ Sheep and Goat Requirements.

(1) All sheep and goats shall be required to be tagged with an Official Scrapie Tag prior unloading into ~~to arrival at~~ the stockyards facility.

(2) ~~[No Official scrapie tags shall not be affixed at the stockyard facility by any person, including the market veterinarian.]~~

~~[(3)]~~ All sheep or goats that are that show evidence of an infectious, contagious, communicable, or parasitic disease shall be moved only with permission of the OSV.

Section 8 ~~[9.]~~ Horse Requirements. ~~[(4)]~~ All equine presented shall require a valid CVI and a negative Equine infectious anemia test prior to entering the stockyards premises.

Section 10. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Application for Kentucky Stockyard Approval", 2020;

(b) "Stockyards Multipurpose Form", 2020 ~~and~~ ;

(c) "Responsibilities Of The Market Veterinarian", 2020; and

(d) "Owner-Shipper Statement", 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 111 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, June 9, 2020)

803 KAR 2:180. Recordkeeping, reporting, statistics.

RELATES TO: KRS 338.015(1), (2), 338.121(3), 338.161, 29 C.F.R. Part 1904

STATUTORY AUTHORITY: KRS 338.061, 338.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.161(1) requires the Department of Workplace Standards, represented by the commissioner to promulgate administrative regulations requiring employers to report occupational safety and health statistics. 29 C.F.R. Part 1904 authorizes requirements for the recording and reporting of occupational illnesses and injuries. This administrative regulation establishes recordkeeping and reporting requirements for employers pursuant to KRS Chapter 338.

Section 1. Definitions. (1) "Amputation" means an injury in which a portion of the body including bone tissue is removed.

~~[(2)]~~ "Hospitalization" means formal admission to a hospital or clinic for care, treatment, observation, or diagnostic testing.

~~[(3)]~~ "Loss of eye" means the physical removal of an eye from the socket.

~~[(2)]~~ "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

~~[(4)]~~ "Hospitalization" means formal admission to a hospital or clinic for care, treatment, observation, or diagnostic testing.

~~[(5)]~~ "Loss of eye" means the physical removal of an eye from the socket.

~~[(6)]~~ ~~[(5)]~~ "Occupational Safety and Health Act" or "OSHA" means KRS Chapter 338.

~~[(7)]~~ ~~[(6)]~~ "Secretary of Labor" means the Secretary of the United States Department of Labor or the Secretary of the Labor Cabinet.

~~[(8)]~~ ~~[(7)]~~ "Section 11(c) of the Act" means KRS 338.121(3).

Section 2. An employer shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration, except as modified by the definitions in Section 1 of this administrative regulation and the requirements of Section 3/2/3 of this administrative regulation:

(1) 29 C.F.R. Part 1904, effective July 1, 2019 ~~[2018]~~; and

(2) The amendment to 29 C.F.R. Part 1904 as published in the May 14, 2019 Federal Register, Volume 83, Number 93. ~~[The~~

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amendment to 29 C.F.R. Part 1904 as published in the January 25, 2019 Federal Register, Volume 84, Number 17.]

Section 3. Reporting Fatalities, Amputations, [In-Patient] Hospitalizations, or Loss of Eye. The reporting requirements established in this section shall apply in lieu of 29 C.F.R. 1904.39.

(1) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any of the following which occurs in the work environment, or is caused or contributed to by an event in the work environment [work-related incident that results in the]:

(a) Death of any employee, including any death resulting from a heart attack; or

(b) Hospitalization of three (3) or more employees, including any hospitalization resulting from a heart attack.

(2) The report required pursuant to subsection (1) of this section shall be made within eight (8) hours from when the death or hospitalization of three (3) or more employees [incident] is reported to the employer, the employer's agent, or another employee. If the employer cannot speak with someone in the Frankfort office, the employer shall report the incident using the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742).

(3) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any of the following which occurs in the work environment, or is caused or contributed to by an event in the work environment [work-related incident that results in]:

(a) An amputation suffered by an employee;

(b) An employee's loss of an eye; or

(c) The hospitalization of fewer than three (3) employees within seventy-two (72) hours following the incident, including any hospitalization resulting from a heart attack.

(4) The report required pursuant to subsection (3) of this section shall be made within seventy-two (72) hours from when the amputation, loss of an eye, or hospitalization of three (3) or less employees [incident] is reported to the employer, the employer's agent, or another employee.

(5) The requirement to report the loss of an eye pursuant to subsection (3)(b) of this section shall be effective January 1, 2016.

Section 4. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on June 9, 2020.

CONTACT PERSON: Chuck Stribling, OSH Federal State Coordinator, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-3289, fax (502) 564-4769, email Chuck.Stribling@ky.gov.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, June 9, 2020)

803 KAR 2:406. Signs, signals, and barricades.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.200-1926.203

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[–29 C.F.R.–1926.200-1926.203]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) **requires[authorizes]** the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman of the board to reference federal standards without board approval if necessary to meet federal time requirements. [KRS 338.061(2) authorizes the board to incorporate by reference

established federal standards and national consensus standards.] KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes standards [to–be] enforced by the Department of Workplace Standards [Division of Occupational Safety and Health Compliance] in the construction industry.

Section 1. Definitions. (1) "Administration" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky.

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "Assistant secretary" means Secretary [of Labor], [Kentucky] Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(4) "U.S. Department of Labor" means Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, or U.S. Department of Labor.

Section 2. Except as modified by **the definitions in** Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1926.200-1926.203[–revised July 1, 2013]; **[and]**

(2) The revisions to 29 C.F.R. 1926.200-1926.202 as published in the June 13, 2013 Federal Register, Volume 78, Number 114, and confirmed and corrected in the November 6, 2013 Federal Register, Volume 78, Number 215; **and.]**

(3) **The amendments to 29 C.F.R. 1926.200-1926.203 as published in the May 14, 2019 Federal Register, Volume 84, Number 93.**

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air.

RELATES TO: KRS 338.015(1), (2), (3), 338.051, 338.061, 29 C.F.R. 1926.800-1926.804, and **1926 Subpart S, Appendix A** [1926 Subpart S App. A]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements[necessary to accomplish the purposes of KRS Chapter 338]. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. 29 C.F.R. 1926.800-1926.804 and **1926 Subpart S, Appendix [App.] A** establish federal requirements relating to underground construction, caissons, cofferdams, and compressed air. This administrative regulation establishes the underground construction, caissons, cofferdams, and compressed air standards [to–be] enforced by the Department of Workplace Standards [Division of Occupational Safety and Health Compliance] in the [area of] construction industry.

Section 1. Definitions. (1) "Assistant secretary[Secretary]" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

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- (3) "Employee" is defined by KRS 338.015(2).
- (4) "Employer" is defined by KRS 338.015(1).
- (5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

- (1) 29 C.F.R. 1926.800 - 1926.804, and 1926 Subpart S, Appendix A [~~revised as of July 1, 2012~~]; and
- (2) The amendments to 29 C.F.R. 1926.800 as published in the May 14, 2019 Federal Register, Volume 84, Number 93. [~~April 23, 2013 Federal Register, Volume 78, Number 78.~~]

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, June 9, 2020)

803 KAR 2:425. Toxic and hazardous substances.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.1101-1926.1153

STATUTORY AUTHORITY: KRS 338.051(~~3~~), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman of the board to reference federal standards without board approval if necessary to meet federal time requirements. [~~29 C.F.R. 1926.1101 to 1926.1153 establish the federal requirements relating to toxic and hazardous substances.~~] KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes the general standards [~~to be~~] enforced by the Department of Workplace Standards in the construction industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) [~~2~~] "Director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(5) "Employee" is defined in KRS 338.015(2).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National Consensus Standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) [~~3~~] "U.S. Department of Labor" means Kentucky Labor Cabinet 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, [~~or as provided under Section 3 of this administrative regulation,~~] the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1101 through 1926.1153 [~~revised as of July 1, 2016~~]; and

(2) The amendments to 29 C.F.R. 1926 Subpart Z as published in the May 14, 2019 Federal Register, Volume 84, Number 93. [~~and~~

(2) ~~The amendments to 29 C.F.R. 1926 Subpart Z as published in the January 9, 2017 Federal Register, Volume 82, Number 5.~~

Section 3. (1) ~~The provisions of 29 C.F.R. 1926.1153 shall not be in effect as to the construction industry until the United States Department of Labor, Occupational Safety and Health Administration begins enforcement of the standard.~~

(2) ~~The construction industry shall comply with mineral dusts table for silica exposure in Appendix A to 29 C.F.R. 1926.55, as adopted in 803 KAR 2:403, until the United States Department of Labor, Occupational Safety and Health Administration begins enforcement of 29 C.F.R. 1926.1153.]~~

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 9, 2020)

810 KAR 1:001. Definitions for 810 KAR Chapter 1.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215(2), 230.225(5), 230.260(8), 230.361(1), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes[grants] the Kentucky Horse Racing Commission [~~the authority~~] to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) authorizes[grants] the commission [~~the authority~~] to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation defines the terms used in 810 KAR Chapter 1.

Section 1. Definitions. (1) "Added money" means cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to 810 KAR Chapter 1.

(4) "Association" is defined by KRS 230.210(5)[~~4~~].

(5) "Authorized agent" means any person currently licensed as an agent for a licensed owner or jockey by virtue of notarized appointment of agency filed with the commission.

(6) "Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in a mutuel field, on which a single pari-mutuel wager may be placed.

(7) "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

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(8) "Breakage" means the net pool minus payout.

(9) "Breeder" means the owner of the dam of a horse when the horse was foaled. A horse is "bred" at the place of its foaling.

(10) "Calendar days" means consecutive days counted irrespective of number of racing days.

(11) "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 810 KAR 6:020[Chapter 1].

(12) "Claiming race" means any race in which every horse running in the race may be transferred in conformity with 810 KAR 4:050[Chapter 1].

(13) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(14) "Commission" means:

(a) The Kentucky Horse Racing Commission ~~[[formerly known as the Kentucky Horse Racing Authority and defined in KRS 230.210(2)]]~~ if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; and

(b) If used in the context of pari-mutuel wagering, the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615.

(15) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(16) "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(17) "Declaration" means the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR Chapter 1.]

(18) "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on an historical horse race.

(19) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 or Title 811[KAR Chapter 1] and can include:

(a) Refusal to issue or renew a license;

(b) Revocation or suspension of a license;

(c) Imposition of probationary conditions on a license;

(d) Issuance of a written reprimand or admonishment;

(e) Imposition of fines or penalties;

(f) Denial of purse money;

(g) Forfeiture of purse money; or

(h) Any combination of paragraphs (a) through (g) of this subsection.

(20) "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.

(21) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810[KAR Chapter 1].

(22) "Equipment" means accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(23) "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which no pari-mutuel wagering is permitted.

(24) "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race other than a win, place, or show wager placed on a live horse race.

(25) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse that[which] is not a mutuel entry.

(26) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling

of the stewards or the commission.

(27) "Free handicap" means a handicap for which no nominating fee is required to be weighted, but an entrance or starting fee may be required for starting in the race.

(28) "Handicap race" means a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(29) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(30) "Historical horse race" means any horse race that:

(a) Was previously run at a licensed pari-mutuel facility located in the United States;

(b) Concluded with official results; and

(c) Concluded without scratches, disqualifications, or dead-heat finishes.

(31) "Horse" means a thoroughbred registered with The Jockey Club irrespective of age or sex designation.

(32) "Ineligible" means a horse or person not qualified under 810 KAR Chapter 1 or conditions of a race to participate in a specified racing activity.

(33) "Initial seed pool" means a nonrefundable pool of money funded by an association in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race.

(34) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(35) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(36) "Licensed premises" means:

(a) The location and physical plant described in response to question P of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in 2010;

~~(b) [- Licensed premises may also include] Real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted; or~~

(c) One (1) facility or real property that is:

1. Owned, leased, or purchased by a licensed association within a sixty (60) mile radius of the association's track but not contiguous to track premises, upon commission approval; and

2. For purposes of paragraphs (b) and (c) of this subsection, is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track of simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.

(37) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(38) "Maiden" means a horse which has never won a race on the flat at a recognized meeting in any country. A maiden which was disqualified after finishing first remains a maiden. Race conditions referring to maidens shall be interpreted as meaning maidens at the time of starting.

(39) "Match race" means a race between two (2) horses for which no other horses are eligible.

(40) "Meeting" means the entire period of consecutive days,

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exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

(a) Begins[- A meeting shall begin] at 10 a.m. of the first racing day; and

(b) Extends[and extend] through a period ending one (1) hour after the last scheduled race of the last day.

(41) "Minus pool" means a pari-mutuel pool in which the amount of money to be distributed on winning wagers exceeds the amount of money contained in the net pool.

(42) "Month" means calendar month.

(43) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(44) "Net pool" means the total amount wagered less refundable wagers and takeout.

(45) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(46) "Nominator" means the person in whose name a horse is entered for a race.

(47) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(48) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(49) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(50) "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(51) "Place," if used in the context of a single position in the order of finish in a race, means second; if used in the context of pari-mutuel wagering, a "place" wager means one involving a payoff on a betting interest which finished first or second in a race; if used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first or second.

(52) "Post" means the starting point of a race.

(53) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(54) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(55) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(56) "Purse" means the gross cash portion of the prize for which a race is run.

(57) "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(58) "Race" means a running contest between thoroughbreds, ridden by jockeys, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(59) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(60) "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(61) "Recognized meeting" means any meeting with regularly scheduled live horse races for thoroughbreds on the flat, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with The Jockey Club and whose race records can be provided to an association by The Jockey Club.

(62) "Registration certificate" means:

(a) The document issued by The Jockey Club certifying the name, age, color, sex, pedigree, and breeder of a horse as registered by number with The Jockey Club; or

(b) The document known as a "racing permit" issued by The Jockey Club in lieu of a registration certificate if a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

(63) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(64) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(65) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with **KAR Title 810[KAR Chapter 1]**.

(66) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(67) "Secretary" means the duly appointed and currently serving secretary of the commission.

(68) "Seed pool" means a pool of money funded by patrons wagering on an historical horse race that is used to ensure that all patrons are paid the minimum payout on winning wagers.

(69) "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(70) "Stakes" means all fees;

(a) Paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of the race; and

(b)[- These fees shall be] Included in the purse.

(71) "Stakes race" means a race that[which] closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of \$50,000 or more without payment of stakes. With the exception of stakes races in North America, "stakes race" shall exclude races not listed by The Jockey Club Information System International Cataloguing Standards, Part One (1).

(72) "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.

(73)[(72)] "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR **2:040[4:004]** serving at a current meeting in the Commonwealth. [

(73) "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.]

(74) "Subscription" means nomination or entry of a horse in a stakes race.

(75) "Takeout" means the total amount of money, excluding breakage and any amounts allocated to a seed pool, withheld

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from each pari-mutuel pool, as authorized by KRS 230.3615 and 810 KAR Chapter 1.

(76) "Terminal" means any self-service totalizator machine or other mechanical equipment used by a patron to place a pari-mutuel wager on a live or historical horse race.

(77) "Thoroughbred racing" is defined by KRS 230.210(21)(3).

(78) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(79) "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(80) "Walkover" means a race in which the only starter or all starters represent single ownership.

(81) "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

(82) "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

(83) "Weight for age" means the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as set out in 810 KAR 4:020(4-014)(12).

(84) "Workout" means the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(85) "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. ~~If in the event that~~ any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 9, 2020)**

810 KAR 2:001. Definitions for 810 KAR Chapter 2.

RELATES TO: ~~KRS Chapter 230~~810 KAR Chapter 2

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 2.

Section 1. Definitions.

(1) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(2) "Arrears" means sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, driver fees, forfeitures, and any default

incident to KAR Title 810.

(3) "Association" is defined by KRS 230.210(5).

(4) "Authorized agent" means in flat racing a person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(5) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with ~~[811 KAR 4:050]~~ 810 KAR 4:050 and 810 KAR 5:030.

(6) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(7) "Commission" means:

(a) The Kentucky Horse Racing Commission ~~[[formerly known as the Kentucky Horse Racing Authority and defined in KRS 138.511(4)]]~~ if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or

(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.

(8) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(9) "Dash" means in standardbred racing a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which a horse starts in all dashes with positions drawn for each dash and the number of purse distributions or payouts awarded exceeds the number of starters in the dash.

(10) "Day" means a twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(11) "Declaration" means:

(a) In flat racing, the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with ~~[KAR Title]~~ 810 KAR Chapter 4; or

(b) In standardbred racing, the naming of a particular horse as a starter in a particular race.

(12) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

- (a) Refusal to issue or renew a license;
- (b) Revocation or suspension of a license;
- (c) Imposition of probationary conditions on a license;
- (d) Issuance of a written reprimand or admonishment;
- (e) Imposition of fines or penalties;
- (f) Denial of purse money; or
- (g) Forfeiture of purse money.

(13) "Disqualification" means a ruling of the stewards, judges, or the commission revising the order of finish of a race.

(14) "Draw" means the process of determining post positions by lot.

(15) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(16) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(17) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(18) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes riding crop, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(19) "Extended pari-mutuel meeting" means in standardbred racing a meeting or series of meetings, at which no agriculture fair is in progress, with an annual total of more than six (6) days

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duration and during which pari-mutuel wagering is permitted.

(20) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse that[which] is not a mutuel entry.

(21) "Foul" means an action by a jockey or driver that tends to hinder another jockey or a horse in the proper running of the race.

(22) "Handicap" means in standardbred racing a race in which allowances are made according to a horse's:

- (a) Age;
- (b) Sex;
- (c) Claiming price; or
- (d) Performance.

(23) "Handicap race" means in flat racing a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(24) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(25) "Horse" means an equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(26) "Ineligible" means a horse or person not qualified under KAR Title 810 or conditions of a race to participate in a specified racing activity.

(27) "Inquiry" means an investigation by the stewards or judges of a contest prior to declaring the result of the contest official.

(28) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(29) "Judge" means a duly appointed racing official with powers and duties specified in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(30) "Licensed premises" means:

(a) The location and physical plant described in response to question R of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in the following year;

(b) ~~[-Licensed premises may also include]~~ Real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted; or

(c) One (1) facility or real property that is:

1. Owned, leased, or purchased by a licensed association within a sixty (60) mile radius of the [such] association's track but not contiguous to track premises, upon commission approval; and

2. [provided—that] For purposes of paragraphs[subsections] (b) and (c) of this subsection, [such property] is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.

(31) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(32) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

(a) Begins[- A meeting shall begin] at 10 a.m. of the first racing day; and

(b) Extends[extend] through a period ending one (1) hour after the last scheduled race of the last day.

(33) "Month" means calendar month.

(34) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(35) "Nominator" means the person in whose name a horse is entered for a stakes race.

(36) "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, driver, trainer, or owner before the race is declared official.

(37) "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards or judges.

(38) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(39) "Owner" means a person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(40) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(41) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(42) "Post" means the starting point of a race.

(43) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(44) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(45) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

~~(46) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules, which, if true, would exclude that horse or driver from racing. [~~

~~(46) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.]~~

(47) "Purse" means the gross cash portion of the prize for which a race is run.

(48) "Race" means a running contest between horses, ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(49) "Race day" means a period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(50) "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(51) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(52) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(53) "Rulings" means determinations, decisions, or orders of the stewards, judges, or of the commission duly issued in writing and posted.

(54) "Scratch" means the withdrawal of a horse entered for a

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race after the time of closing of entries for the race in conformance with KAR Title 810.

(55) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(56) "Simulcasting" is defined by KRS 230.210(19).

(57) "Starter" means:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(58) "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(59) "Subscription" means nomination or entry of a horse in a stakes race.

(60) "Suspended" means withdrawal by the steward, judge, or commission of racing privileges.

(61) "Thoroughbred racing" is defined by KRS 230.210(21).

(62) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(63) "Year" means twelve (12) consecutive months beginning with January and ending with December.

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 9, 2020)**

810 KAR 4:030. Entries, subscriptions, and declarations.

RELATES TO: KRS 230.215, 230.240, 230.290, 230.310, 230.320

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260(8) grants the commission the authority 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 4:010 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 horse shall not be entered in two (2) races to be run on the same day.

(8)(a) A horse that has not started in the past ~~forty-five~~[fortyfive] (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 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.

(c) 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.

(d) 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.

(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/such~~ horse for the fourteen (14) day period prior to the entry date.

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 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, shall be joined as a mutuel entry and single betting interest, except as established in subsection (5) of this section.

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(3) More than two (2) horses having common ties through ownership 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, a preference for one (1) of the horses shall be made.

(4)(a) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single entry, unless the horses have been uncoupled pursuant to subsection (5) of this section.

(b) In a purse race, the racing secretary may uncouple entries having common ties through training to make two (2) separate betting interests.

(5) In any stakes race with added money of \$50,000 or more, the racing secretary may uncouple mutuel entries of horses sharing common ties through training or ownership or both.

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 commission 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, 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 mutuel 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 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 the succeeding 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 and handicaps.

(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.

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 commission 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 the succeeding 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[parimutuel] 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. Thereafter, a horse shall not be scratched un-less:

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 mutual 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 commission'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 commission 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. Examination by Attending Veterinarian.

(1) Subject to the exception in subsection[paragraph] (4), a [A] horse shall only 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 no more than three (3) days prior to entry;

(b) The attending veterinarian certifies in writing that the horse is in serviceable, sound racing condition; and

(c) The written certification is provided to the racing secretary no later than the time of entry.

(2) The examination required by paragraph (a) of subsection (1) of this section shall include 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 commission'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 an extra race, the trainer may enter a horse prior to obtaining the examination and written certification required in this section, ~~if provided that~~ the certification required in this section is provided to the racing secretary:

(a) On the same day that the horse is entered; / and

(b) Prior to the race in which the horse is entered.

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 9, 2020)**

810 KAR 5:001. Definitions for 810 KAR Chapter 5.

RELATES TO: KRS 230.210, 230.215, 230.260, 230.3615

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations establishing ~~grants the commission the authority to regulate~~ conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) authorizes~~grants~~ the commission ~~[the authority]~~ to ~~promulgate~~~~prescribe~~ necessary and reasonable administrative regulations ~~establishing~~~~and~~ conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 5.

Section 1. Definitions.

(1) "Added money" means the amount of money, exclusive of trophy, added into a stakes race by an association, a sponsor, a state-bred program, or other fund, and which is in addition to stakes fees paid by subscribers.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Also eligible" means in standardbred racing:

(a) An eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline; or

(b) The next preferred nonqualifier for the finals, or consolation from a set of elimination trials, which becomes eligible if a finalist is scratched by the judges for a rule violation, or is otherwise eligible if written race conditions permit.

(4) "Appeal" means a request for the commission to investigate, consider, and review any decision or ruling of a steward, judge, or official of a meeting.

(5) "ARCI" means the Association of Racing Commissioners

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International.

(6) "Association" is defined by KRS 230.210(5).

(7) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 810 KAR 5:030.

(8) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(9) "Coggins test" means a blood test used to determine if a horse is positive for Equine Infectious Anemia.

(10) "Commission" means:

(a) The Kentucky Horse Racing Commission if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or

(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.

(11) "Condition race" means an overnight race in which eligibility is determined according to specified conditions, which may include the following:

(a) Age;

(b) Sex;

(c) Earnings;

(d) Number of starts; or

(e) Positions of finishes.

(12) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(13) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(14) "Dash" means in standardbred racing a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which:

(a) A horse starts in all races with positions drawn for each race; and

(b) The number of purse distributions or payouts awarded does exceed the number of starters in the race.

(15) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(16) "Declaration" means in standardbred racing the naming of a particular horse as a starter in a particular race.

(17) "Disqualification" means a ruling of the stewards, judges, or the commission revising the order of finish of a race.

(18) "Draw" means the process of determining post positions by lot.

(19) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(20) "Early closing race" means in standardbred racing a race for a definite amount of money in which entries close at least six (6) weeks prior to the race.

(21) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(22) "Elimination heat" means in standardbred racing an individual heat of a race in which the contestants qualify for a final heat.

(23) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(24) "Extended pari-mutuel meeting" means in standardbred racing a meeting or series of meetings:

(a) At which no agriculture fair is in progress;

(b) With an annual total of more than six (6) days duration; and

(c) During which pari-mutuel wagering is permitted.

(25) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse that[which] is not a mutuel entry.

(26) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards, judges, or the commission.

(27) "Foul" means any action by any jockey or driver that tends to hinder another jockey or any horse in the proper running of the race.

(28) "Futurity" means in standardbred racing a stake in which the dam of the competing animal is nominated either when in foal

or during the year of foaling.

(29) "Handicap" means in standardbred racing a race in which allowances are made according to a horse's:

(a) Age;

(b) Sex;

(c) Claiming price; or

(d) Performance.

(30) "Horse" means any equine registered for racing with the applicable breed registry, irrespective of age or sex designation.

(31) "Ineligible" means a horse or person not qualified under Title 810 KAR or conditions of a race to participate in a specified racing activity.

(32) "In harness" means, in standardbred racing, that the performance will be to a sulky.

(33) "Judge" means a duly appointed racing official with powers and duties specified in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(34) "Late closing race" means in standardbred racing a race for a fixed amount of money in which entries close less than six (6) weeks but more than three (3) days before the race is to be contested.

(35) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(36) "Licensed premises" means:

(a) The location and physical plant described in response to question S of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in the following year; or

(b) Real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted; or

(c) One (1) facility or real property that is:

1. Owned, leased, or purchased by a licensed association within a sixty (60) mile radius of the association's track but not contiguous to track premises, upon commission approval; and

2. For purposes of paragraphs (b) and (c) of this subsection, is not within a sixty (60) mile radius of another licensed track premises where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.[One (1) facility or real property that is owned, leased, or purchased by a licensed association within a sixty (60) mile radius of such association's track but not contiguous to track premises, upon commission approval; and provided that for the purposes of subsections (b) and (c), such property is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.]

(37) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(38) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

(a) Begins[beginning] at 10 a.m. of the first racing day; and

(b) Extends[extending] through a period ending one (1) hour after the last scheduled race of the last day.

(39) "Month" means calendar month.

(40) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(41) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(42) "Nominator" means the person in whose name a horse is entered for a stakes race.

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(43) "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, driver, trainer, or owner before the race is declared official.

(44) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(45) "Overnight race" means a contest for which entries close at a time set by the racing secretary.

(46) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(47) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one (1) or more designated wagering pools and the net pool is returned to the winning patrons.

(48) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(49) "Post" means the starting point of a race.

(50) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(51) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(52) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules which, if true, would exclude that horse or driver from racing.

(53) "Purse" means the gross cash portion of the prize for which a race is run.

(54) "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(55) "Race" means a running contest between horses, ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(56) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(57) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(58) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(59) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(60) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission issued in writing and posted.

(61) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with Title 810 KAR.

(62) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(63) "Simulcasting" is defined by KRS 230.210(19).

(64) "Stable name" means in standardbred racing a name used other than the actual legal name of an owner or lessee and which has been registered with the United States Trotting Association.

(65) "Stake" means in standardbred racing a race which will be contested in a year subsequent to its closing:

(a) In which the money given by the association conducting the race is added to the money contributed by the nominators, all of which, except deductions for breeders or nominator's awards, belongs to the winner or winners; and

(b) In which, except as provided in 810 KAR 5:050, Section 6, all of the money contributed by the nominators belongs to the winner or winners.

(66) "Stakes" mean all fees:

(a) Paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as required by the conditions of the race; **and**

(b) ~~with the fees to be~~ Included in the purse.

(67) "Starter" means either:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(68) "Subscription" means nomination or entry of a horse in a stakes race.

(69) "Sulky" means a dual-wheel racing vehicle with dual shafts not exceeding the height of the horse's withers.

(70) "Suspended" means withdrawal of racing privileges by the judges or commission.

(71) "USTA" means the United States Trotting Association.

(72) "Year" means twelve (12) consecutive months beginning with January and ending with December.

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 9, 2020)**

810 KAR 5:070. Running of the race.

RELATES TO: KRS Chapter 13B, 230.215, 230.260(1), 230.280, 230.290(2), (3), 230.300, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.320(1), 230.361(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.320(1) authorizes the commission to promulgate administrative regulations setting out the conditions under which licenses may be denied, revoked, or suspended. KRS 230.361(1) requires[authorizes] the commission to promulgate regulations concerning the pari-mutuel wagering system. This administrative regulation establishes track rules and requirements concerning proper racing conduct, the starting and timing of races, placing, money distribution, post time and postponements, and protests.

Section 1. Driving Violations. A leading horse shall be entitled to any part of the track. After selecting a position in the home stretch, a driver of a horse shall not:

(1) Change either to the right or left during any part of the race if another horse is so near the driver that in altering positions, the driver:

(a) ~~[The driver]~~ Compels the horse behind to shorten strides; or

(b) Causes the driver of any other horse to pull the horse out of his stride;

(2) Jostle, strike, hook wheels, or interfere with another horse or driver;

(3) Cross sharply in front of a horse or cross over in front of a field of horses in a reckless manner, endangering other drivers;

(4) Swerve in and out or pull up quickly;

(5) Crowd a horse or driver by "putting a wheel under him";

(6) "Carry a horse out" or "sit down in front of him", take up

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abruptly in front of other horses so as to cause confusion or interference among the trailing horses, or do any other act that constitutes "helping";

(7) Allow a horse to pass inside needlessly or otherwise help another horse to improve its position in the race;

(8) Lay off a normal pace and leave a hole if it is well within the horse's capacity to keep the hole closed;

(9) Commit an act **that/which** impedes the progress of another horse or causes the horse to "break";

(10) Change course after selecting a position in the home stretch and swerve in or out, or bear in or out, in a manner **that/which** interferes with another horse or causes the horse to change course or take back;

(11) Drive in a careless or reckless manner or fail to maintain reasonable control of the horse at all times during the race;

(12) Whip under the arch of the sulky;

(13) Cross the inside limits of the course;

(14) Fail to set or maintain a pace comparable to the class being raced, including traveling an excessively slow quarter or any other distance that changes the normal pattern, overall timing, or general outcome of the race; or

(15) Kick a horse. Removal of a foot from the stirrups in and of itself shall not constitute the act of kicking.

Section 2. Leaving the Course.

(1) A horse or a horse's sulky that leaves the course by brushing, running over, or going inside of a pylon demarcation shall have violated this administrative regulation and may be penalized by a disqualification if in the opinion of the judges:

(a) The action results in the horse gaining an unfair advantage over other horses in the race;

(b) The action helps the horse improve its position in the race; or

(c) The driver goes inside the pylons and does not immediately correct position.

(2) A horse using the inside to pass shall have complete clearance of the pylons.

(3) A driver striking pylons but not gaining an unfair advantage shall be cited for a violation of this administrative regulation unless he was forced to strike the pylons by circumstances beyond his control.

(4) If an act of interference causes a horse or part of a horse's sulky to be in violation of this administrative regulation and the horse is disqualified, the offending horse shall be placed behind the horse with which it interfered.

Section 3. Penalties.

(1) A horse that violates Section 1 or 2 of this administrative regulation shall:

(a) Be placed back one (1) or more positions in the heat or dash behind the horse with which the horse interfered;

(b) Be disqualified from receiving any winnings, if a horse is prevented from finishing as a result of the violation; or

(c) Be placed last among finishing horses, if a horse which the violating horse interfered with fails to finish the race due to a separate and unrelated incident.

(2) If a violation **established/set forth** in Section 1 or 2 of this administrative regulation is committed by a person driving a horse coupled as an entry in the betting, the judges shall set both horses back, if the judges determine that the violation may have affected the finish of the race. Otherwise, penalties shall be applied individually to the drivers of any entry.

Section 4. Complaints, Reports of Interference.

(1) Complaints.

(a) A complaint by a driver relating to driving or other misconduct during a heat shall be made at the termination of the heat, unless the driver is prevented from doing so by an accident or injury.

(b) A driver desiring to enter a claim of foul or other complaint of violation of the rules shall, before dismounting, indicate to the judges the driver's intention to enter a claim or complaint, and immediately upon dismounting, the driver shall proceed to the telephone or judges' stand where the claim, objection, or other complaint shall be immediately entered.

(c) The judges shall not cause the official sign to be displayed until the claim, objection, or complaint has been entered and considered.

(2) Report of interference. A driver shall report to the designated official any interference to himself or herself or to the driver's horse by another horse or driver during a race.

Section 5. Unsatisfactory Drive; Fraud.

(1) A heat in a race shall be fairly contested by each horse in the race, and each horse shall be driven to the finish.

(2) A horse shall not be driven:

(a) With design to prevent the horse from winning a heat or dash which the horse was evidently able to win;

(b) In an inconsistent manner with the intent to improperly manipulate the outcome of a race; or

(c) To perpetrate or to aid in a fraud.

(3) The judges shall substitute a competent and reliable driver at any time prior to the start of the heat or race if the judges have reason to doubt the competence or reliability of the original driver.

Section 6. Removal and Substitution of Driver. A driver may be removed and another driver substituted after the positions have been assigned in a race if, in the opinion of the judges, a driver:

(1) Is unfit or incompetent to drive;

(2) Refuses to comply with the directions of the judges; or

(3) Is reckless in his or her conduct and endangers the safety of horses or other drivers in the race.

Section 7. Failure to Finish. If, for any cause other than being interfered with or broken equipment, a horse fails to finish after starting in a heat, that horse shall be ruled "did not finish."

Section 8. Disruptive Conduct.

(1) A driver shall not engage in disruptive or distracting, improper conduct during a race.

(2) A driver may remove a foot from the stirrup temporarily for the purpose of pulling earplugs.

Section 9. Whipping.

(1) A driver may have a whip that does not exceed four (4) feet with a snapper not longer than six (6) inches.

(2) Except for the ordinary whip or crop, a person shall not use any goading device, chain or mechanical device, or appliance upon a horse in any race, training exercise, or while on association grounds.

(3) (a) A whip or crop shall not be used in a brutal, excessive, or indiscriminate manner during a race, training exercise, or while on association grounds.

(b) A driver shall use a whip only in the conventional manner, by holding the handle and whipping the horse only above the shafts with wrist and elbow movement only. Full swings or going behind the head is prohibited.

(c) Welts, cuts, or whip marks on a horse resulting from whipping shall constitute a prima facie violation of this section.

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(d) A driver shall not:

1. Whip a horse under the arch or shafts of the sulky;
2. Kick a horse;
3. Punch a horse;
4. Jab a horse;
5. Use the whip so as to interfere with or cause disturbance to any other horse or driver in a race;
6. Whip a horse after a race; or
7. Whip a horse that is exhausted or no longer in contention to win the race.

(4) A driver shall keep a line in each hand and both hands shall stay in front of the body of the driver from the start of the race until the finish of the race. The left line shall be held in the left hand and the right line shall be held in the right hand.

Section 10. Hopples.

(1) A horse shall not wear hobbles in a race unless it has qualified in hobbles.

(2) Having so started, the horse shall continue to wear them to the finish of the race.

(3) A person shall not remove or alter a horse's hobbles during a race, or between races, for the purpose of fraud.

(4) A horse habitually wearing hobbles shall not start in a race without them unless:

- (a) The horse performs satisfactorily in a qualifying race; or
- (b) The presiding judge excuses the horse from performing in a qualifying race.

(5) A horse habitually racing free-legged shall not wear hobbles in a race unless:

- (a) The horse performs satisfactorily in a qualifying race; or
- (b) The presiding judge excuses the horse from performing in a qualifying race.

(6) A horse shall not wear a head pole protruding beyond its nose.

Section 11. Breaking.

(1) If a horse breaks from its gait in trotting or pacing, the driver shall at once, if clearance exists, take the horse to the outside and pull it to its gait.

(2) A driver shall not:

- (a) Fail to properly attempt to pull the horse to its gait;
- (b) Fail to take to the outside or inside if clearance exists;
- (c) Fail to lose ground by the break; or
- (d) Fail to prevent extended break.

(3) If there has been no failure on the part of the driver in complying with subsection (2) of this section, the horse shall not be set back unless a contending horse on its gait is lapped on the hind quarter of the breaking horse at the finish.

(4) A driver shall not allow a horse to break for the purpose of fraudulently losing a heat.

(5) If a horse or driver's actions cause another horse to be off-stride at the wire, the offending horse shall be placed behind the horse with whom it interfered after all other placements have been made.

(6) A horse making a break, which causes interference with other contesting horses, shall be placed behind all offended horses.

(7) The judges shall set a horse back one (1) or more places if this section is violated.

Section 12. Breaks. One (1) of the judges shall call out every break made, and the clerk shall at once note the break and its character in writing.

Section 13. Time Between Heats and Races. The time between separate heats of a single race shall be no less than forty (40) minutes. A heat shall not be called after sunset if the track is not lighted for night racing. The time between races shall not exceed thirty (30) minutes.

Section 14. Accidents.

(1) If any horse in the current program falls, runs uncontrollably on the track, or is involved in an accident after starting to warm up, that horse shall be permitted to start only after examination and approval by the commission veterinarian.

(2) If an accident occurs, the judges shall allow adequate time in between posts to clear the track. A driver involved in an accident shall be cleared by an emergency medical technician or paramedic before resuming driving engagements.

Section 15. Sulkies.

(1) A driver shall be seated in his sulky at the finish of the race or the horse shall be placed as not finishing.

(2) The owner and trainer shall provide every sulky used in a race with uncolored or colorless wheel discs on the inside and outside of the wheel of a type approved by the commission. If necessary, the presiding judge may order the use of mud guards to be provided by the owners or trainers.

(3) A sulky shall not be used in a race unless it meets the requirements of the rules and regulations of the United States Trotting Association, 2018, Rule 18, Section 25, "Sulky Performance Standards".

Section 16. Helmets. A protective helmet, securely fastened under the chin and meeting the Snell Memorial Foundation 2000 Standard for Protective Headgear for Use in Harness Racing, shall be worn at all times on the premises of an association while:

- (1) Racing, parading, or warming up a horse prior to racing; or
- (2) Jogging, training, or exercising a horse at any time.

Section 17. Safety Vests. A safety vest shall be worn while racing, parading, or warming up a horse prior to racing.

Section 18. A licensee shall not:

(1) Refuse to comply with an order or ruling of a member or employee of the commission, a racing official, or judge;

(2) Interfere with the performance of the duty of a person specified in subsection (1) of this section;

(3) Threaten, strike, or harass an owner, trainer, driver or attendant of a horse, or an employee of the association or commission;

(4) Sexually harass an owner, trainer, driver or attendant of a horse, or an employee of the association or commission; or

(5) Use force or intimidation against an owner, trainer, driver or attendant of a horse, or an employee of the association or commission.

Section 19. (1) A person or association shall not offer any money, benefit, or other inducement to any licensee, employee of the commission, or officer of a racing association to affect the entries to a race, the running of a race, or the outcome of a race.

(2) Any action prohibited by subsection (1) of this section shall be immediately reported to the judges who shall promptly inform the racing association and the commission.

Section 20. (1) An owner, trainer, agent, or driver of a horse shall not threaten or join with others in threatening not to race, or not to declare in, because of the entry of a certain horse or a

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particular stable, thereby compelling or attempting to compel the racing secretary to reject an eligible entry.

(2) An action prohibited by subsection (1) of this section shall be immediately reported to the commission.

Section 21. An owner, agent, or driver who has entered a horse shall not demand of the association a bonus of money or other special award or consideration as a condition for starting the horse.

Section 22. Wagering.

(1) A driver shall not place a wager, or cause a wager to be placed on his or her behalf, or accept a ticket or winnings from a wager on a race, except:

- (a) A race on the horse he is driving; and
- (b) Through the owner or trainer of the horse he is driving.

(2) An owner or trainer who places a wager for his driver shall:

- (a) Maintain a complete record of the wager; and
- (b) Make the record available for examination by the judges upon request.

Section 23. Duty to Report Fraudulent Proposal. A person shall immediately report to the presiding judge the details of an offer, promise, or request for a bribe or wager intended to affect the outcome of a race.

Section 24. Denerving.

(1) A horse that has had a chemical, surgical, or thermal neurectomy at or above the fetlock shall not be permitted to race.

(2) A horse that has had a palmar or plantar digital neurectomy may be permitted to race if:

- (a) The neurectomy has been reported by the trainer to the stewards; and
- (b) The horse has been approved for racing by the commission veterinarian prior to being entered to race.

(3) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate, virtual certificate, racing permit, and entry in the electronic registration system. Responsibility for ensuring that the neurectomy is correctly noted on the horse's registration certificate, virtual certificate, racing permit, and entry in the electronic registration system shall fall:

- (a) Jointly on the practicing veterinarian who performed the operation and the trainer of the denerved horse if the neurectomy was performed at a location under the commission's jurisdiction; and
- (b) Solely on the owner of the denerved horse if the neurectomy was performed at a location not under the commission's jurisdiction.

(4) If a horse races in violation of this section and participates in the purse distribution, a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this section and is claimed, a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours requesting that the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be made publicly available.

Section 25. Spayed Mares. If a mare has been spayed:

(1) It shall be noted on the:

- (a) Registration certificate;
- (b) Electronic eligibility certificate; and
- (c) Program when the mare races; and

(2) The owner shall:

- (a) Notify the United States Trotting Association that the mare has been spayed; and
- (b) Return the mare's papers to the United States Trotting Association for correction.

Section 26. Starting Gate.

(1) Starter's control. The starter shall have control of the horses from the formation of the parade until the word, "go", is given.

(2) Before or during the parade, the starter shall inform the drivers of the number of scores permitted. After one (1) or two (2) preliminary warming up scores, the starter shall notify the drivers to proceed to the starting gate.

(3) A horse shall not be brought to the starting gate nearer than one eighth (1/8) of a mile before the start, if the length of the stretch permits.

(4) On a mile track, a horse shall be brought to the starting gate at the head of the stretch.

(5) The starting point shall be a point on the inside rail a distance of at least 200 feet from the first turn. The starter shall give the word "go" at the starting point.

(6) When a speed has been reached in the course of a start there shall **not** be **afno** decrease except in the case of a recall.

(7) If a recall is necessary, a light plainly visible to the driver shall be flashed and a recall sounded and, if possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. The starter may close the wings of the gate if an emergency situation arises.

(8) There shall **not** be **afno** recall after the word "go" has been given and any horse, regardless of position or accident, shall be considered a starter from the time the horse enters into the starter's control, unless dismissed by the starter or judges pursuant to subsection (10) of this section.

(9) The starter shall endeavor to start all horses in position and on gait, but a recall shall not be sounded for a breaking horse.

(10) The starter may sound a recall only for the following reasons, if the starter believes the integrity of the race may be jeopardized:

- (a) A horse scores ahead of the gate;
- (b) There is interference;
- (c) A horse has broken equipment;
- (d) A horse falls before the word "go" is given;
- (e) There is a malfunction of the starting gate;
- (f) A horse comes to the gate out of position; or
- (g) A circumstance arises **that[which]** will not allow a fair start, as determined by the starter.

(11) A driver shall not:

- (a) Delay the start;
- (b) Fail to obey the starter's instructions;
- (c) Rush ahead of the inside or outside wing of the gate;
- (d) Come to the starting gate out of position;
- (e) Cross over before reaching the starting point;
- (f) Interfere with another driver during the start; or
- (g) Fail to come up into position.

(12) Unless granted permission by the presiding judge, a person other than the starter, or the starter's driver or operator, shall not be allowed to ride in the starting gate.

(13) Use of a mechanical loudspeaker for any purpose other

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than to give instructions to drivers shall be prohibited. The volume shall not be higher than necessary to carry the voice of the starter to the drivers.

Section 27. Holding Horses Before Start.

(1) A horse shall not be held on the backstretch for more than three (3) minutes awaiting post time, except if delayed by an emergency or by permission of the judges.

(2) Post time shall[must] be posted no later than two (2) minutes following a previous race with the exception of mutual malfunction.

(3) Horses shall[may] not be held on the track more than ten (10) minutes unless permission is granted by the Presiding Judge.

Section 28. Two (2) Tiers.

(1) If there are two (2) tiers of horses, the withdrawal of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier.

(2)(a) If a horse is drawn from any tier, horses on the outside shall fill the vacancy.

(b) If a horse has drawn a post position in the second tier, the driver of the horse may elect to score out behind any horse in the first tier, if the driver does not interfere with another trailing horse or deprive another trailing horse of a drawn position.

Section 29. Starters.

(1) A horse shall be considered to have started when the word, "go", is given by the starter, and a horse shall be required to complete the course except in case of accident, broken equipment, or other circumstance which, in the opinion of the judges, makes it impossible or unsafe to complete the course.

(2) For the purpose of declaring a horse a nonstarter, the judges shall consider the actual starting point on the track regardless if there was a start.

Section 30. Unmanageable Horse.

(1) If, in the opinion of the judges or the starter, a horse is unmanageable or may cause accidents or injury to another horse or to any driver, it shall be scratched. The starter shall notify the judges of the scratch, who shall then notify the public.

(2) A horse shall be considered unmanageable if it causes two (2) recalls in the same dash or heat, in which case it shall be scratched.

Section 31. Bad Acting Horse. At a meeting where there is no wagering, the starter may place a bad acting horse on the outside. At a pari-mutuel meeting, this action may be taken only if there is time for the starter to notify the judges, who shall in turn notify the public prior to the sale of tickets for the race. If tickets have been sold, the bad acting horse shall be scratched under the provisions of Section 30 of this administrative regulation.

Section 32. Post Positions; Heat Racing. The horse winning a heat shall take the pole (or inside position) in the succeeding heat, unless otherwise specified in the published conditions, and all others shall take their positions in the order they were placed in the last heat. If two (2) or more horses finish in a dead heat, their positions shall be settled by lot.

Section 33. Shield. The arms of a starting gate shall be provided with a screen or a shield in front of the position for each horse, and the arms shall be perpendicular to the rail.

Section 34. Unfair Advantage Prior to Start. If a horse comes to the gate out of its assigned post position and gains an unfair advantage by moving either to the left or right to its assigned post position before the starter gives the word, "go," that horse shall be disqualified and placed by the judges.

Section 35. Malfunction of the Gate. A licensed starter shall check the starting gate for malfunctions before commencing a meeting and shall practice the measures to be followed if there is a malfunction. Both the starter and the driver of the gate shall know and practice emergency measures, and the starter shall be responsible for the training of drivers in taking emergency measures.

Section 36. Timing Races. The time of a heat shall be taken by:

- (1) One electronic timing device; and
- (2) One hand-held timing device.

Section 37. Track Measurement Certificate. An association shall file with the commission a certificate from a duly licensed civil engineer or land surveyor attesting that the track has been measured from wire to wire three (3) feet out from the pole or inside hub rail, and certifying in linear feet the result of the measurement. If there is a change or relocation of the hub rail, the track shall be measured and recertified.

Section 38. Time for Lapped on Break. The leading horse shall be timed and his time only shall be announced. A horse shall not obtain a win race record by reason of the disqualification of another horse unless the horse's actual race time can be determined by photo finish or electronic timing.

Section 39. Time for Dead Heat. ~~If there is[in case of]~~ a dead heat, the time shall constitute a record for the horses making a dead heat and both shall be considered winners.

Section 40. Timing Procedure. The time shall be taken from the first horse leaving the point from which the distance of the race is measured until the winner reaches the wire.

Section 41. Time Performances.[

~~(4)]~~ Time performances shall be permitted with the permission of the presiding judge subject to the following:

~~(1)](2)]~~ A urine test or blood test or both shall be required for any horse with a winning time performance; ~~and[.]~~

~~(2)](3)]~~ A workout for the judges or time trial performance shall not be used to qualify a horse to race.

Section 42. Unless otherwise provided in the conditions, a purse shall be distributed on the dash basis with the money awarded according to a horse's position in each separate dash or heat of the race. Purse money distribution in overnight events shall be limited to the first five (5) finishers.

Section 43. Dashes.

(1) Except ~~for[in the case of]~~ stakes or futurities as ~~established[set forth]~~ in 810 KAR 5:050[040], Section 7, unless otherwise specified in the conditions, the money distribution in dashes shall be in the following percentages: fifty (50), twenty-five (25), twelve (12), eight (8), and five (5).

(2) In early closing races, late closing races, or added money events, if there are less than five (5) starters, the remaining purse shall go to the race winner unless the conditions call for a different

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distribution.

(3) In overnight events, if there are less than five (5) starters, the purse for the position for which there are no starters shall be retained by the association.

(4) If there is a purse for which horses have started but were unable to finish due to an accident, all non-offending horses that did not finish shall share equally in the premium or premiums.

(5) If there is a purse for which horses have started but were unable to finish and the situation is not covered by subsection (4) of this section, the purse shall be paid to the winner.

Section 44. If unfavorable weather or other unavoidable cause exists that necessitates postponement of a race, and the judges consent, an association shall postpone a race in the following manner:

(1) Early closing races, stakes, and futurities shall be postponed to a definite hour the next fair day and good track.

(2) A late closing race, early closing race, stake, or futurity (except as provided in subsections (4) and (5) of this section) that cannot be raced during the scheduled meeting shall be declared off, and the entrance money and forfeits shall be divided equally among the nominators who have horses declared in and eligible to start.

(3) A late closing race or early closing race that has been started and remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary. A late closing race or early closing race that has been started but postponed by rain earlier in the meeting shall be declared ended and the full purse divided according to the summary, if there is sufficient time to conduct the race during the scheduled meeting.

(4) A stake or futurity shall be raced where advertised, and the race meeting, if necessary, shall be extended. A stake or futurity that has been started and remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary, unless the association elects to extend the meeting to complete the race. A horse that is scratched after a heat and before a race is declared finished shall not participate in purse distribution from subsequent heats.

(5) Unless otherwise provided in the conditions of the race, unanimous consent shall be obtained from the association and from those with eligibles in the race before a stakes race or futurity may be transferred to another meeting.

(6) At a meeting of more than five (5) days duration, an overnight event may be postponed and carried over for a maximum of two (2) racing days.

(7) At a meeting of five (5) days duration or less, an overnight event or late closing race shall be cancelled and starting fees shall be returned if postponement occurs, unless the association adds the postponed race to the advertised program and the race is held within two (2) weeks of cancellation.

(8) A postponed race may, at the option of the association, be contested in a single mile dash. If a race is postponed under this administrative regulation, the association shall select the order in which the events shall be raced in any combined program.

Section 45. Post Time.

(1) If racing is conducted at night or twilight, the racing program shall be completed no later than 12:00 a.m., midnight.

(2) Post time for the first race of the evening shall be fixed by the association. A delay in the first post of not more than ten (10) minutes from the established post time may be taken without prior approval of the commission.

Section 46. Number of Races Per Program.

(1) If eight (8) races are programmed, four (4) completed races shall constitute a completed program.

(2) If nine (9) races are programmed, five (5) completed races shall constitute a completed program.

(3) If ten (10) or more races are programmed, six (6) completed races shall constitute a completed program.

Section 47. Postponements.

(1) Racing shall not be conducted by an association over a track that is dangerous to drivers or horses.

(2) If inclement weather or other conditions appear to make the track dangerous, the presiding judge, a representative of the association, and a representative of the Kentucky Harness Horseman's Association or the Kentucky Harness Association shall determine whether racing shall be conducted or postponed.

(3) If a difference of opinion exists between the representative of the association and the representative of the Kentucky Harness Horseman's Association or the Kentucky Harness Association as to whether racing shall be conducted or postponed, the decision of the presiding judge shall be final.

Section 48. Protests. Protests shall:

(1) Be made only by:

- (a) An owner;
- (b) A manager;
- (c) A trainer; or
- (d) A driver; **[and]**

(2) **[Shall]** Be made at any time before distribution of the purse is made;

(3) **[Shall]** Be made in writing;

(4) **[Shall]** Be sworn to; and

(5) **[Shall]** Contain at least one (1) specific charge questioning eligibility which, if true, would prevent the offending horse from competing in the race.

Section 49. The judges shall, in case of protest, demand that the driver and the owner or owners, if present, shall immediately testify under oath. If a person refuses to testify after being ordered to do so and the race has not yet started, that person's horse shall not be allowed to start or continue in the race, but shall be ruled out, and any entrance money shall be forfeited.

Section 50. Unless the judges find satisfactory evidence to warrant excluding the horse, they shall allow a horse to start or continue in the race under protest. If the purse is won by that horse, it shall be retained by the association on behalf of the commission to allow the interested parties to continue the protest proceeding, in accordance with Section 53 of this administrative regulation.

Section 51. A person shall not knowingly, and with intent to influence the results of a race, protest a horse falsely and without cause.

Section 52. This administrative regulation shall not affect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, if the distribution is made upon the official placing at the conclusion of the heat or dash.

Section 53. (1) A protest shall be reviewed and appealed in accordance with the procedures set forth in 810 KAR 8:030 and KRS Chapter 13B.

(2) The purse money affected shall be deposited with the

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association pending the decision of the protest review or appeal.

Section 54. A judge shall not refuse to accept a protest.

Section 55. A person who has knowledge, prior to a race, of information that would prevent an ineligible horse from running in a race, and who fails to file a protest prior to the race with regard to that horse, shall have waived the right to protest after the race if the protest would have prevented the ineligible horse from running in the race.

Section 56. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) Rules and Regulations of the United States Trotting Association, 2018, Rule 18, Section 25, "Sulky Performance Standards"; and

(b) The Snell Memorial Foundation's "2000 Standard for Protective Headgear for Use in Harness Racing".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. **[This material is also available on the Kentucky Horse Racing Commission Web site, <http://khrc.ky.gov>.]**

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 9, 2020)**

810 KAR 7:040. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.

RELATES TO: KRS 230.215, 230.260, 230.770, 230.802, ~~230.990~~

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the **Kentucky Horse Racing Commission** to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting. KRS 230.770(1) establishes the Kentucky standardbred development fund. KRS 230.770(6) and (7) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky standardbred breeders' incentive fund. KRS 230.802(2)(b) **requires[authorizes]** the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, criteria for the distribution of moneys from these funds, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions.

(1) "Commission" means the Kentucky Horse Racing Commission.

(2) "Consolation" means the race following a series of preliminary legs for the next preferred horses, as **established[set forth]** in Section ~~6[8]~~ of this administrative regulation, which did not qualify for the finals of each racing division of the Kentucky Sire Stakes program.

(3) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sire Stakes Program.

(4) "Kentucky-bred" means a standardbred horse that is:

(a) Foaled out of a standardbred mare that is registered with the commission and is a resident of Kentucky ~~[as provided in this administrative regulation]~~; or

(b) Sired by a standardbred stallion residing in Kentucky that meets the requirements of this administrative regulation.

(5) "Kentucky Sire Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year old Kentucky-bred fillies and colts, both trotting and pacing, and funded in whole or in part by the Kentucky Standardbred Development Fund or the Kentucky Standardbred Breeders' Incentive Fund.

(6) "KSBI" means the Kentucky Standardbred Breeders' Incentive Fund as established in KRS 230.802.

(7) "KSDF" means the Kentucky Standardbred Development Fund as established in KRS 230.770.

(8) "Stallion residing in Kentucky" means a stallion physically located and standing in Kentucky for 180 days of the calendar year in which the stallion is registered that does not service mares in any other state, jurisdiction, or country outside Kentucky during the calendar year in which the stallion is registered.

(9) "USTA" means the United States Trotting Association.

Section 2. Domicile Requirements.

(1)(a) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion residing in Kentucky who desires to use the stallion to breed and to have his progeny eligible for the KSDF or KSBI shall register the stallion with the commission by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBI Stallion Certificate of Eligibility Form", KHRC 7-040-2.

(b) Standardbred stallions not residing in Kentucky are not required to register with the commission. The progeny of a standardbred stallion not residing in Kentucky is not eligible for the KSDF or KSBI unless the progeny is that of a standardbred mare registered under and meeting the requirements of this **administrative** regulation.

(c) All standardbred stallions shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency whether residing in Kentucky or not.

(2) (a) An owner, lessee, manager, or syndicate manager of a standardbred mare who desires to use the mare for breeding purposes and to have her progeny eligible for the KSDF or KSBI shall register the mare by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBI Mare Certificate of Eligibility Form", KHRC 7-040-3.

(b) To be eligible for registration, the mare shall:

1. Be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency; and

2. Have resided in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be

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eligible.

(c) If a horse is conceived by embryo and ovum transplant (ET), both the donor mare and recipient mare shall be registered during the year of conception, and the recipient mare shall reside in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(3) Registrations shall be received by the commission by the close of business or postmarked on the deadline established in this section in order to be eligible.

(4) An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBIF shall be responsible for:

(a) The registrations and records of the farm where the stallion stands or the mare resides; and

(b) Complying with all applicable requirements of this administrative regulation.

Section 3. Eligibility.

(1) In order to qualify for the Kentucky Sire Stakes, a foal shall be a two (2) or three (3) year old Kentucky-bred and maintain eligibility for the KSDF and KSBIF.

(2) (a) Except as provided by paragraph (b) of this subsection, only a foal that is the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo and ovum transplant (ET), shall be eligible for the Kentucky Sire Stakes.

(b) Natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare shall also be eligible.

(3) Any future offspring of foals ineligible for racing under this section shall be ineligible for the Kentucky Sire Stakes.

Section 4. Distance. Each Kentucky Sire Stakes race shall be a one (1) mile dash.

Section 5. Post Positions. Post positions for the final, consolation, and all preliminary legs of the Kentucky Sire Stakes race shall be an open draw with two (2) horses drawn for the final and consolation races that are designated as "also eligibles" under Section 6 ~~(7)~~(6) of this administrative regulation.

Section 6. Eligibility for the Final and Consolation Races.

(1) Beginning with the 2018 Kentucky Sire Stakes races, consolation races may be eligible for funding.

(2) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final or consolation.

(a) All horses earning points may enter in the final with:

1. The top eight (8) point earners, if the horses raced on a half (1/2) mile track or five-eighths (5/8) mile track; or

2. Top ten (10) point earners, if the horses raced on a one (1) mile track, to be declared eligible.

(b) On a half (1/2) mile track or five-eighths (5/8) mile track, the top eight (8) point earners shall not be eligible for the consolation. On a one (1) mile track, the top ten (10) point earners shall not be eligible for the consolation.

(c) A horse that is eligible to race in the final shall only be eligible to race in the final, unless the horse is qualified as an also eligible.

(d) A horse that is eligible to race in the consolation shall only be eligible to race in the consolation, unless qualified in the final as an also eligible.

(e) A horse that scratches from the final shall not race in the consolation.

(f) A horse that has qualified for the final or consolation shall remain eligible for the final or consolation.

(g) At least seven (7) eligible horses shall be declared for a consolation race to be contested.

(h) A horse that is automatically eligible to race in the final race shall not start in the consolation race.

(3) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements ~~established~~~~set forth~~ in subsection (2) of this section and toward determining tiebreaker status as ~~established~~~~set forth~~ in subsection (6)(b) of this section.

(4) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements ~~established~~~~set forth~~ in subsection (2) of this section.

(5) A horse, in order to start in the final or consolation, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

(6) (a) If the number of horses eligible and declared into any final or consolation event exceeds the maximum number specified by the KSDF or KSBIF or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

1. 1st place - fifty (50) points;

2. 2nd place - twenty-five (25) points;

3. 3rd place - twelve (12) points;

4. 4th place - eight (8) points;

5. 5th place - five (5) points;

6. 6th place and all other starters - one (1) point; and

7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(b) If there is a tie among horses after the awarding of points pursuant to paragraph (a) of this subsection, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.

(c) If a horse that is qualified for the final or consolation is not declared, the horse with the next highest point total, pursuant to paragraph (a) of this subsection, that is declared shall be eligible for the final or consolation.

(7) Also eligibles.

(a) The two (2) horses accumulating the highest point total, pursuant to subsection (6) of this section, that are declared into the final or consolation, but do not qualify for the final or consolation, shall be designated "also eligible". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final or consolation shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final or consolation as a replacement after the official scratch time deadline that is in effect at the host track.

Section 7. Final Order of Finish. The judges' "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry

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box for final events.

Section 8. Detention. All starters shall be subject to the detention policy of the racetrack.

Section 9. Number of Starters.

(1) There shall not be more than:

- (a) Ten (10) starters in each final race on a one (1) mile track; and
 - (b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.
- (2) All horses shall be on the gate for the final race.

Section 10. Declaration Fees.

(1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of \$500. If a preliminary leg splits into two (2) or more divisions, the declaration fee shall be \$500 per division.

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the KSDF and KSIF shall consist of money from:

- (a) Nominating fees;
- (b) Sustaining fees;
- (c) Declaration fees; and
- (d) Added money from the Commonwealth of Kentucky.

(4)(a) Distribution of revenue for Kentucky Sire Stakes races shall be reviewed and addressed annually, not later than December 15 of each calendar year, by an advisory panel appointed by the Chairman of the commission and consisting of one (1) representative from each of the following:

1. The commission, who shall serve as the chairman of the panel;

- 2. The Kentucky Harness Horseman's Association;
- 3. The Kentucky Harness Association;
- 4. ~~The~~ host racetrack; and

5[4]. ~~One (1) participant~~[Two (2) participants] in the fund nominated by the chairman of the commission from a group of up to ~~four (4)~~[six (6)] nominees recommended by each of the above ~~four (4)~~[three (3)] members having ~~one~~[two] (1) ~~nomination~~[nominations] each.

(b) Each member of the panel shall serve from July 1 through June 30 of the following year and shall be a resident of Kentucky.

(c) The final determination regarding distribution of revenue shall be made by the commission.

Section 11. Divisions of Preliminary Legs.

(1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

- (a) One (1) mile track:
 - 1. Twelve (12) horses or less entered - one (1) division race.
 - 2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.
 - 3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.
 - 4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.
 - 5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.
 - 6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.
- (b) One-half (1/2) and five-eighths (5/8) mile track:

- 1. Nine (9) to ten (10) horses entered - one (1) division.
 - 2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.
 - 3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.
 - 4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.
 - 5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.
 - 6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.
- (c) If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.

Section 12. Gait.

(1) Gait shall be specified by the owner of the horse on or before the first two (2) year old payment.

(2)(a) Change of gait:

~~(a)]~~ may be made at the time of declaration at the track;~~f;~~ ~~and]~~

(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 13. Divisions. A race shall be raced in separate divisions as follows:

- (1) Colt, gelding, ridgeling divisions; and
- (2) Filly divisions.

Section 14. Purse Distributions.

(1) The purses awarded for all races shall be distributed on the following percentage basis:

- (a) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;
- (b) Four (4) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund;
- (c) Three (3) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13) percent reverts back to the fund;
- (d) Two (2) starters - fifty (50) percent, and twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund; and
- (e) One (1) starter - fifty (50) percent, and the remaining fifty (50) percent reverts back to the fund.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.[]

~~(3) In addition to the purses set forth in subsection (1) of this section, \$25,000 shall be awarded in each division of the finals to the owner of the stallion or stallions residing in Kentucky that sired the first, second, or third place finisher, as follows:~~

- ~~(a) First place: \$15,000;~~
- ~~(b) Second place: \$7,500; and~~
- ~~(c) Third place: \$2,500.]~~

Section 15. Cancellations.

(1) If circumstances prevent the racing of an event and the race is not drawn, all funds allocated to the division in each of the preliminary legs or the final shall be refunded and prorated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 20[22] of this administrative

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regulation.

(3) The added monies provided by the Commonwealth of Kentucky for use in the KSDF and KSBIF shall be disbursed by December 15 of each calendar year in accordance with the formula created by the panel as set out in Section ~~10[12]~~(4) of this administrative regulation.

Section 16. Qualifying.

(1) Any horse declared into a Kentucky Sires Stakes race shall:

(a) Show at least one (1) charted race line with no breaks within forty-five (45) days prior to the day of the race; and

(b) Have satisfied the following time requirements:

1. On a track larger than five-eighths (5/8) of a mile:

a. A two (2) year old trotter shall have been timed in two minutes and six seconds (2:06) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and four seconds (2:04) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and two seconds (2:02) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and zero seconds (2:00) or faster.

2. On a five-eighths (5/8) mile track:

a. A two (2) year old trotter shall have been timed in two minutes and seven seconds (2:07) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and five seconds (2:05) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and three seconds (2:03) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and one second (2:01) or faster.

3. On a one-half (1/2) mile track:

a. A two (2) year old trotter shall have been timed in two minutes and eight seconds (2:08) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and six seconds (2:06) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and four seconds (2:04) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and two seconds (2:02) or faster.

(2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.

(3) The requirements of this section shall apply both to wagering and nonwagering races.

Section 17. Purse Allocations.

(1) At a scheduled meeting of the commission, the commission shall:

(a) Establish the distribution of funds for stakes races for the upcoming year; and

(b) Authorize expenditures at a time it designates.

(2) The racing dates for KSDF and KSBIF stakes shall be issued after the track has established its race dates.

Section 18. Promotions. The KSDF or KSBIF shall provide a trophy for each event, and the program that provides the trophy shall purchase the trophy out of its fund.

Section 19. Nomination Fees.

(1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year. The "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 7-040-1,

shall be filed with the commission along with the nomination and sustaining fees.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible to the KSDF and KSBIF as a three (3) year old.

(3). Nomination and sustaining payments shall be made to the KSDF and KSBIF in U.S. funds by a money order or a check drawn on a U.S. bank account.

Section 20. Nomination Schedule.

(1) Yearlings shall be nominated by May 15 of their yearling year, except as provided in subsection (4) of this section.

(2) For yearlings sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, the nomination fee shall be forty (40) dollars per yearling. For yearlings sired by a standardbred stallion not residing in Kentucky, the nomination fee shall be eighty (80) dollars per yearling.

(3) Nominated horses shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall be properly identified to the satisfaction of the commission at the time of the nomination. Identification shall be determined by the official registration maintained by the USTA, Standardbred Canada, or other appropriate international harness racing governing agency.

(4) If a horse is not nominated during its yearling year, the horse may be nominated prior to March 15 of its two (2) year old year if:

(a) For horses sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, a nomination fee of \$500 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section; or

(b) For horses sired by a standardbred stallion not residing in Kentucky, a nomination fee of \$600 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section.

(5) Sustaining payments shall be as follows:

(a) TWO (2) YEAR OLD PAYMENTS	
March 15	\$300
April 15	\$300
May 15	\$300
March 15 payment shall be mandatory to make entry eligible as a three (3) year old.	

(b) THREE (3) YEAR OLD PAYMENTS	
February 15	\$300
March 15	\$300
April 15	\$300

Section 21. Early Closing Events. The commission may provide for separate early closing events for Kentucky-bred horses.

Section 22. Stallion and Breeder awards. The commission may provide for stallion and breeder awards for Kentucky-bred horses.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 7-040-1, 11/2018;

(b) "KSDF/KSBIF Stallion Certificate of Eligibility Form", KHRC 7-040-2, 11/2018; and

(c) "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC

7-040-3, 11/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. [~~This material is also available on the KHRC Web site at <http://khrc.ky.gov>.~~]

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**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 9, 2020)**

811 KAR 1:250. Exotic wagering.

RELATES TO: KRS 230.210-230.375, 230.750, 230.990

STATUTORY AUTHORITY: KRS 230.215(2), 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361(1), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) ~~authorizes[grants]~~ the Kentucky Horse Racing Commission [~~the authority~~] to regulate conditions under which standardbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating ~~pari-mutuel[mutual]~~ wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the procedures and regulations governing exotic wagering under KRS Chapter 230 and 811 KAR Chapter 1.

Section 1. All Pari-mutuel Wagers on an Historical Horse Race Are Exotic Wagers. All pari-mutuel wagers other than win, place, or show wagers on a live horse race are exotic wagers.

Section 2. Exotic Wagers to Be Approved by Commission.

(1) An association shall not offer an exotic wager on any live or historical horse race without the prior written approval of the commission.

(2) An association making a request to offer an exotic wager on a live or historical horse race may make an oral presentation to the commission regarding the wager, prior to the commission deciding on the request.

(a) The presentation shall be made by the association during a meeting of the commission.

(b) The presentation shall be limited to the information contained in the written request and any supplemental information relevant to the commission's determination of the suitability of the wager.

(c) The commission may require an association to clarify or otherwise respond to questions concerning the written request as a condition to approval of the exotic wager.

(3) The commission may request additional information from an association regarding the exotic wager if the additional information would assist the commission in deciding whether to approve it.

(4) In reviewing a written request for an exotic wager, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the wager should be approved.

(5) The commission or its designee shall review and test the

exotic wager and shall give its approval if it is satisfied that:

(a) The wager does not adversely affect the safety or integrity of horse racing or pari-mutuel wagering in the Commonwealth; and

(b) The wager complies with KRS Chapter 230 and 811 KAR Chapter 1.

(6) The commission shall notify the association if it determines that the criteria ~~established[set forth]~~ in subsection (5) of this section are no longer being met and it intends to withdraw approval of a particular exotic wager.

(7) An association shall not implement any change or modification to the practices, procedures, or representations upon which the approval of the exotic wager was based without the prior written approval of the commission.

Section 3. Exotic Wagers on a Live Horse Race.

(1) Except as ~~established[set forth]~~ in subsection (2) of this section, an association shall submit a written request to the commission for permission to offer any exotic wager on a live horse race, which shall include a detailed description of the rules that apply to the wager and the method of calculating payouts.

(2) If the rules have not been modified since the wager was approved by the commission, an association shall not be required to seek the commission's approval to offer the following previously approved exotic wagers on live horse races: Exacta, Perfecta, Quinella, Trifecta, Superfecta, Double Perfecta, Big Q, Twin Trifecta, Daily Double, Super High 5, Pick-3, Pick-4, and Pick-6.

Section 4. Exotic Wagers on an Historical Horse Race.

(1) An association shall submit a written request to the commission for permission to offer any exotic wager on an historical horse race, which shall include:

(a) The types, number, and denominations of pari-mutuel wagers to be offered;

(b) A detailed description of the rules that apply to the pari-mutuel wager and the method of calculating payouts, including how money will be allocated to the seed pool;

(c) The days and hours of operation during which wagering on historical horse races will be offered;

(d) A detailed description of the proposed designated area and the terminal or terminals on which the pari-mutuel wagers will be made, including an architect's rendering of the proposed designated area ~~that[which]~~ describes the size, construction, layout, capacity, number of terminals, and location of surveillance and other security equipment, and at least one (1) photograph of the designated area when construction is completed;

(e) The practices and procedures that will ensure the security, safety, and comfort of patrons in the designated area;

(f) The manufacturer, make, and model of the terminal, including a copy of all literature supplied by the manufacturer of the terminal;

(g) The maintenance and repair procedures that will ensure the integrity of the terminals;

(h) A complete list of individuals who are authorized to examine and repair the terminals for any reason; and

(i) A memorandum outlining the terms of the agreement between the association and the Kentucky Harness Horsemen's Association or the Kentucky Harness Association referenced in Section 6(2) of this administrative regulation.

(2)(a) Except as ~~established[set forth]~~ in paragraph (b) of this subsection, each association that is approved by the commission to offer exotic wagering on an historical horse race shall request, in any application submitted for a license to conduct

live horse racing pursuant to KRS 230.300 and 810 KAR 3:010[811 KAR 1:037]:

1. No less than 100 percent of the number of racing days initially requested by the association in its application to conduct standardbred racing for the 2010 racing year; and

2. No less than 100 percent of the number of races initially requested by the association in its application to conduct standardbred racing for the 2010 racing year.

(b) An association may apply for less than 100 percent of the number of racing days initially applied for by the association in its application to conduct standardbred racing for 2010, or the number of races initially applied for by the association in its application to conduct standardbred racing for 2010, if written approval is obtained from the commission and the Kentucky Harness Horsemen's Association or the Kentucky Harness Association.

Section 5. Terminals Used for Wagering on an Historical Horse Race.

(1) Wagering on historical horse races shall be conducted only on terminals approved by the commission as established[~~set forth~~] in Sections 2(5) and 5(2) of this administrative regulation. The commission shall not require any particular make of terminal.

(2)(a) The commission shall require testing of each terminal used for wagering on historical horse races by an independent testing laboratory to ensure its integrity and proper working order.

(b) The independent testing laboratory shall be chosen by the commission and the expense of the testing shall be paid by the association offering the wagering on historical horse races.

(3) Each terminal for wagering on an historical horse race shall display odds or pool amounts that the patron will receive for a winning wager on each pari-mutuel wagering pool.

Section 6. Takeout.

(1) Each association conducting exotic wagering on historical horse races shall deduct a takeout, which shall not exceed the percentages established[~~set forth~~] in KRS 230.750.

(2)(a) Each association shall enter into an agreement with the Kentucky Harness Horsemen's Association or the Kentucky Harness Association establishing the allocation of the takeout on all exotic wagers on historical horse races offered by the association. The agreement shall apply to all exotic wagers on historical horse races offered, or to be offered, by the association during the term of the agreement.

(b) The agreement shall include provisions allocating a percentage of the takeout to purses on live races run by the association.

(c) Each association shall provide a memorandum outlining the terms of the agreement to the commission.

Section 7. Severability. ~~If in the event that~~ any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, June 9, 2020)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS Chapter 194A, 202A.011(12), 205.245, 209.020(4), 216.530, 216.557(1), 216.750(2), 216.765(2), Chapter 216B, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind, or had a disability.

(4) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities specified in Section 6(2) of this administrative regulation.

(5) "Department" means the Department for Community Based Services or its designee.

(6) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(7) "Instrumental activities of daily living" is defined by KRS 194A.700(9).

(8) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(9) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 20:001.

(10) "Qualified mental health professional" is defined by KRS 202A.011(12).

(11) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.

(12) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program

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payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b)1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 9 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 7, 8, and 9 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 12;

(c) 907 KAR 20:020, Section 2(4)(a);

(d) 907 KAR 20:025; or

(e) 907 KAR 20:040, Section 1.

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 9 of this administrative regulation; and

(c)1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);

3. Receives caretaker services and is at least eighteen (18) years of age; or

4.a. Resides in a private residence;

b. Is at least eighteen (18) years of age; and

c. Has SMI.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131;

(c) A situation in which a caretaker is required to be hired to provide care other than room and board; or

(d) A private residence, which shall:

1. Be permanent housing with:

a. Tenancy rights; and

b. Preference given to single occupancy; and

2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or

b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department [office] within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient;

or

2. Voluntary relinquishment of a license to the Office of the Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2, of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a caretaker shall be provided to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult or minor child who has a disability; or

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3. Adult child of a parent who is aged, blind, or has a disability.

Section 6. Eligibility for Community Integration Supplementation. (1) Eligibility for the community integration supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:

(a) Not include a primary diagnosis of Alzheimer's disease or dementia;

(b) Be described in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) ~~fourth (4th) edition or edition currently in use~~;

(c) Impair or impede the individual's functioning in at least one (1) major area of living such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and

(d) Be unlikely to improve without treatment, services, or supports.

(2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant, recipient, or care coordinator to establish how:

(a) Often services, including those that address subsection (1)(c) of this section, are provided;

(b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and

(c) Payment is made for the services.

(3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:

(a) Licensed or registered in accordance with KRS Chapter 216B; or

(b) Certified in accordance with KRS Chapter 194A.

Section 7. Resource Consideration. (1) Except as provided [stated] in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:020, Section 2(4)(a);

(c) 907 KAR 20:025; and

(d) 907 KAR 20:040, Section 1.

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) \$2,000 for an individual; or

(b) \$3,000 for a couple.

Section 8. Income Considerations. (1) Except as provided [noted] in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:020, Section 2(4)(a);

(c) 907 KAR 20:025; and

(d) 907 KAR 20:040, Section 1.

(2) The optional supplementation payment shall be determined by:

(a) Adding:

1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1₁ and 2₂ of this subsection from the standard of need in Section 9 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. The applicant or recipient; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for

the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollar general exclusion shall not be an allowable deduction from income.

Section 9. Standard of Need. (1) To the extent funds are available, the standard of need shall be the amount listed in this subsection in addition to all cost of living adjustments determined by the Social Security Administration that have taken place since 2019 pursuant to 42 U.S.C. 415(i) and published at <https://www.ssa.gov/cola/> [is as follows]:

(a) For a resident of a personal care home [on or after January 1, 2019], \$1,291;

(b) For a resident of a family care home [on or after January 1, 2019], \$943;

(c) For an individual [individuals] who receives [receive] caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability [on or after January 1, 2019], \$833;

2. An eligible couple, both aged, blind, or having a disability and one (1) requiring care [on or after January 1, 2019], \$1,218; or

3. An eligible couple, both aged, blind, or having a disability and both requiring care [on or after January 1, 2019], \$1,272; or

(d) For an individual who resides in a private residence and has SMI [on or after January 1, 2019], \$1,291.

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollar personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollar personal needs allowance that shall be retained by the client.

Section 10. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department

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office with:

1. Notification of the temporary admission; and
2. The physician statement specified in paragraph (b) of this subsection.
- (3) A temporary admission shall be limited to the following health care facilities:
 - (a) Hospital;
 - (b) Psychiatric hospital; or
 - (c) Nursing facility.
- (4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 11. Citizenship requirements. An applicant or recipient shall be a:

- (1) Citizen of the United States; or
- (2) Qualified alien.

Section 12. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 13. Mental Illness or Intellectual Disability (MI/ID) Supplement Program. (1) A personal care home:

- (a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month;
- (b) Shall not be eligible for a payment for a Type A Citation that is not abated; and
- (c) Shall meet the following certification criteria for eligibility to participate in the MI/ID Supplement Program:
 1. Be licensed in accordance with KRS 216B.010 to 216B.131;
 2. Care for a population that is at least thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and who have a:
 - a. Primary or secondary diagnosis of intellectual disability including mild or moderate, or other ranges of intellectual disability whose needs can be met in a personal care home;
 - b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or
 - c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;
 3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician or Kentucky medication aide training on duty for at least four (4) hours during the first or second shift each day;
 4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;
 5. Be verified by the Office of the Inspector General in accordance with Section 15(2) through (4) of this administrative regulation; and
 6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.
 - a. Quarters shall begin in January, April, July, and October.
 - b. Unless mental illness or intellectual disability supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.
- (2) A personal care home shall provide the department with its tax identification number and address as part of the application process.
 - (3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:
 - (a) Receipt of verification from the Office of the Inspector General as specified in Section 15(6) of this administrative regulation; and
 - (b) Approval or denial of an application.

- (4) A personal care home shall:
 - (a) Provide the department with an STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form, that:
 1. Lists every resident of the personal care home who was a resident on the first day of the month;
 2. Lists the last four (4) digits only of the resident's Social Security Number;
 3. Lists the resident's date of birth; and
 4. Is marked appropriately for each resident to indicate the resident:
 - a. Has a mental illness diagnosis;
 - b. Has an intellectual disability diagnosis; or
 - c. Receives state supplementation; and
 - (b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:
 1. Mail;
 2. Fax; or
 3. Electronically.
 - (5) The monthly report shall be used by the department for:
 - (a) Verification as specified in subsection (4)(a) of this section;
 - (b) Payment; and
 - (c) Audit purposes.
 - (6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability percentage goes below thirty-five (35) percent for all personal care residents.
 - (b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 14. Mental Illness or Intellectual Disability (MI/ID) Training. (1)(a) A personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall complete the personal care home mental illness or intellectual disability training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities, once every two (2) years.

- (b) Other staff may complete the training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.
- (2) The personal care home mental illness or intellectual disability training shall be provided through a one (1) day workshop. The following topics shall be covered:
 - (a) Importance of proper medication administration;
 - (b) Side effects and adverse medication reactions with special attention to psychotropics;
 - (c) Signs and symptoms of an acute onset of a psychiatric episode;
 - (d) SMI;
 - (e) SMI recovery;
 - (f) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability;
 - (g) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability;
 - (h) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability;
 - (i) Activities of daily living and instrumental activities of daily living;
 - (j) Adult learning principles; and
 - (k) Information about 908 KAR 2:065 and the process for community transition for individuals with SMI.
- (3) Initial training shall:
 - (a) Include the licensed nurse or the individual who has successfully completed certified medication technician or Kentucky medication aide training and may include the owner or operator; and
 - (b) Be in the quarter during which the STS-1 is filed with the department.
- (4)(a) A personal care home shall have at least one (1) direct care staff member who has received training.

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(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician or Kentucky medication aide training; and
- 2.a. Has received mental illness or intellectual disability training; or
- b. Is enrolled in the next scheduled mental illness or intellectual disability training workshop.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:

- (a) Certificate to direct care staff who complete the training workshop; and
 - (b) Listing to the department of staff who completed the training workshop.
- (6) The department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:
- (a) That has applied for the MI/ID Supplement Program; and
 - (b) For each staff member receiving training up to a maximum of five (5) staff per year.

Section 15. MI/ID Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program.

(a) The personal care home's initial MI/ID Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and
 2. Shall be in effect until the next licensure survey.
- (b) After a personal care home's initial MI/ID Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2_ of this subsection.

(c) The department shall notify the Office of the Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of the Inspector General shall:

- (a) Observe and interview residents and staff; and
- (b) Review records to assure the following criteria are met:
 1. Certification is on file at the personal care home to verify staff's completion of training, as specified in Section 14(1) through (4) of this administrative regulation;
 2. The personal care home:
 - a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability training workshop; and
 - b. Maintains documentation of completion at the in-service training for all direct care staff;
 3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training:
 - a. Demonstrates a knowledge of psychotropic drug side effects; and
 - b. Is on duty as specified in Section 13(1)(c)3_ of this administrative regulation; and
 4. An activity is being regularly provided that meets the needs of a resident.
 - a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.
 - b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of the Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID Supplement Program Certification Survey process.

(4) If at least thirty-five (35) percent of the population is mental illness or intellectual disability clients, as specified in Section 13(1)(c)2_ of this administrative regulation, on the day of

the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with the month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or intellectual disability population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a) of this administrative regulation.

(6) The Office of the Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, within fifteen (15) working days of an:

- (a) Initial survey; or
 - (b) Inspection in accordance with KRS 216.530.
- (7) The Office of the Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of the Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of the Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the information requested on the STS-2:

- (a) Relevant to unmet certification criteria specified on the STS-4; and
- (b) Within ten (10) working days after the STS-2 is issued.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 13(1)(c)6_ of this administrative regulation, for the next following quarter.

Section 16. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits", 01/15;
- (b) "STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home", 01/15;
- (c) "STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form", 01/19; and
- (d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/19.

(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.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

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**ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS**

NONE

PROPOSED AMENDMENTS

Public comment periods are at least two months long. For other administrative regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

**FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(Amendment)**

9 KAR 1:010. Statement of financial disclosure.

RELATES TO: KRS 11A.010(7), (9), (13), 11A.050(2), (3)
STATUTORY AUTHORITY: KRS 11A.050(2), 11A.110(3), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) and (4) require the Executive Branch Ethics Commission to promulgate administrative regulations to implement KRS Chapter 11A and to prescribe forms for statements required by this chapter. KRS 11A.050(2) requires the commission to prescribe the form for the statement of financial disclosure. This administrative regulation prescribes the form and incorporates it by reference.

Section 1. Definitions. (1) "Acting" means a public servant who is designated to serve in an officer position temporarily;

(2) "Address or location" means:

(a) A street address or an address assigned to a location by the U.S. postal service, 911 service, or local government; or

(b) If this address is not available, a description of the property so as to easily identify the location, global positioning system coordinates, or the location as described on the deed for the property.

(3) "Business" [(2)-Business] is defined by KRS 11A.010(1).

(4)[(3)] "Candidate" is defined by KRS 11A.010(13).

(5)[(4)] "Commission" is defined by KRS 11A.010(2).

(6)[(5)] "Constitutional Officer" is defined by KRS 11A.010(9)(a) through (g).

(7) "Compensation" [Compensation] is defined by KRS 11A.010(3).

(8)[(6)] "Consumer goods" means any item either tangible or intangible that can be purchased, except for purchases of real property or real estate.

(9)[(7)] "Family" is defined by KRS 11A.010(4).

(10)[(8)] "Gifts of money or property" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received, except for gifts from family members, campaign contributions, the waiver of a registration fee for a presenter at a conference or training described in KRS 45A.097(5), gifts received by a public servant on behalf of his or her agency pursuant to KRS 45A.097, or door prizes that are available to the public.

(11)[(9)] "Home street address" means the address or location at which the officer resides on a permanent basis.

(12)[(10)] "Income" is defined by KRS 11A.010(6).

(13)[(11)] "Officer" is defined by KRS 11A.010(7).

(14)[(12)] "Public servant" is defined by KRS 11A.010(9).

(15)[(13)] "Start date" means the first date of employment with a state agency in the executive branch of the Commonwealth.

Section 2. (1) Newly appointed or acting[Current] officers [and public servants, as defined by KRS 11A.010(9)(a) to (g)] shall file the statement of financial disclosure required by KRS 11A.050(1)(a) on the [statement of financial disclosure] New Hire form EBEC-SFD-103 effective at the time of his or her start date within thirty (30) days of their start date[or effective at the time that candidate filing forms are filed by a candidate].

(2) Currently serving officers and sworn constitutional officers shall file the statement of financial disclosure required by KRS 11A.050(1)(a) and (b) on the Annual form EBEC-SBE-101 between January 1 and April 15 of each year in which he or she serves in an officer position or as a constitutional officer. The Annual form shall be completed for the calendar year preceding the due date[Former officers and former public servants, as defined by KRS 11A.010(9)(a) to (g), shall file the statement of

financial disclosure:

(a) ~~In accordance with KRS 11A.050(1)(c); and~~

(b) ~~On the statement of financial disclosure form effective at the date of departure from state service].~~

(3) Currently serving officers and sworn constitutional officers who have filed as a candidate for constitutional office shall file the statement of financial disclosure required by KRS 11A.050(d) on the Annual form EBEC-SBE-101 by the February 15 that falls after he or she has filed as a candidate. These individuals will only file one form by February 15 to fulfill the requirements of KRS 11A.050(1)(a), (b), and (d) for the year in which they file as a candidate[The statement of financial disclosure required by KRS 11A.050(1) shall be filed on the Statement of Financial Disclosure EBEC-SFD-104].

(4) Individuals who are not currently serving officers or sworn constitutional officers who have filed as a candidate for constitutional office shall file the statement of financial disclosure required by KRS 11A.050(1)(d) on the Candidate form EBEC-SBE-104 by the February 15 that falls after he or she has filed as a candidate.

(5) Former officers and constitutional officers who have left office shall file the statement of financial disclosure required by KRS 11A.050(1)(c) on the Leaver form EBEC-SBE-102 effective at the date of departure from state service within thirty (30) days of leaving service in an officer position or constitutional office.

Section 3. Submission. (1) The signature on the statements required by this administrative regulation shall be:

(a) In blue or black ink; or

(b) Electronic.

(2) The statement of financial disclosure shall be filed with the commission as follows:

(a) By hard copy via hand-delivery, U.S. Mail, or other delivery service to the Commission's address;

(b) Electronically by facsimile to (502) 696-5091;

(c) Electronically by electronic mail to ethicsfiler@ky.gov; or

(d) Through an online system established by the commission.

(3) The statement of financial disclosure incorporated by reference may be reproduced.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Statement of Financial Disclosure" ANNUAL EBEC-SFD-101 (Rev. 05/2020)

(b) "Statement of Financial Disclosure" LEAVER EBEC-SFD-102 (Rev. 05/2020);

(c) "Statement of Financial Disclosure" NEW HIRE EBEC-SFD-103 (Rev. 05/2020); and

(d) "Statement of Financial Disclosure" CANDIDATE EBEC-SFD-104 (Rev. 05/2020)[Statement of Financial Disclosure" EBEC-SFD-101 (Rev. 05/2019) is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTOPHER L. THACKER, Chair

APPROVED BY AGENCY: MAY 18, 2020

FILED WITH LRC: June 9, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2020, at 1:00 p.m., via Video Teleconference platform Amazon Chime, https://chime.aws/1349412511, Meeting ID: 1349 41 2511, and at the primary physical location of Shared Boardroom, Capital Complex East, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by

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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 this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. 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: Kathryn H. Gabhart, Executive Director, Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, (502) 564-7954, facsimile (502) 695-5939, Katie.Gabhart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance to Executive Agency officers as to how to file a Statement of Financial Disclosure with the Executive Branch Ethics Commission as required by KRS 11A.050.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 11A.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides guidance and forms required by KRS 11A.050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently provides guidance and the forms required for Executive Agency officers to file a Statement of Financial Disclosure with the Executive Branch Ethics Commission as required by KRS 11A.050.

(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 further amend the process to better fulfill the mandate of SB 6 of the 2019 General Assembly Session by revising the statement of financial disclosure forms to minimize confusion on the part of the filers.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is required to fulfill the mandates of SB 6 of the 2019 General Assembly Session.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation conforms to the amendment to KRS 11A.050 in SB 6 of the 2019 General Assembly Session by requiring new hires a separate form for their completion.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the administration of KRS 11A.050 to conform to the requirements of SB 6 of the 2019 General Assembly Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Officials of Executive Branch Agencies and those running for constitutional office.

(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: All executive agency officers and those running for constitutional office will be able to file their Statements of Financial Disclosure in accordance with SB 6.

(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 Executive Branch Officials and those running for constitutional office will have to file the required forms through whatever means they choose under the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): There is no known cost associated with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All Executive Branch Officers and those running for Constitutional office will have greater ease and access to file their Statements of Financial Disclosure.

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

(a) Initially: There is no known cost associated with this amended administrative regulation.

(b) On a continuing basis: There is no known cost associated with this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission's existing budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This administrative regulation will not require an increase in any fees or funding.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Executive Branch of state government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 11A.110(3) and 11A.050.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to the administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue? The amendment to the administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? \$500 for publications and training; funds already included in the Executive Branch Ethics Commission's budget.

(d) How much will it cost to administer this program for subsequent years? \$500 for publication and training; funds already included in the Executive Branch Ethics Commission's budget.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(Amendment)**

9 KAR 1:040. Executive agency lobbyist, employer of executive agency lobbyist, and real party in interest registration and expenditure statements; financial transactions and termination forms; and enforcement.

RELATES TO: KRS 11A.201, 11A.211, 11A.216, 11A.221, 11A.231, 11A.233(1), 11A.236, 11A.241(4), (5), (6), 11A.990

STATUTORY AUTHORITY: KRS 11A.110(3), (4), 11A.241(4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) requires the Executive Branch Ethics Commission to promulgate administrative regulations to implement and prescribe forms for statements required by KRS Chapter 11A. KRS 11A.241(4) and (5) require the Executive Branch Ethics Commission to prescribe the initial registration statement, the updated registration statement, and the termination notice required by KRS 11A.211, the statement of expenditures required by KRS 11A.216, and the statement of financial transactions required by KRS 11A.221. This administrative regulation establishes the initial registration, financial transactions statements, expenditure statements, termination notice, and enforcement procedure.

Section 1. Definitions. (1) "Agent" means the "executive agency lobbyist" as defined by KRS 11A.201(8).

(2) "Commission" means the Executive Branch Ethics Commission.

(3) "Employer" is defined by KRS 11A.201(3).

(4) "Executive agency decision" is defined by KRS 11A.201(7).

(5) "Executive agency lobbyist" is defined by KRS 11A.201(8).

(6) "Filer" means the executive agency lobbyist, employer of the executive agency lobbyist, or real party in interest.

(7) "Real party in interest" is defined by KRS 11A.201(15).

Section 2. Initial Registration Statement. (1) ~~The~~ ~~Until June 30, 2019, the initial registration statement required by KRS 11A.211(1) shall be filed on the Initial Registration Statement (Rev. 4/2016). After June 30, 2019, the~~ initial registration statement required by KRS 11A.211(1) shall be filed on the Initial Registration Statement EBEC-EAL-201.

(2)(a) The brief description of the executive agency decision shall include the subject matter for which an executive agency lobbyist:

1. Has been engaged; or
2. Is responsible.

(b) Subject matters shall include:

1. An award of grant for social services;
2. A lease for office space or equipment;
3. A contract to provide food, clothing, or other consumable products;
4. Any decisions made concerning the matters listed in KRS 11A.201(7)(a) through (f); and
5. Any other subject matter.

Section 3. (1)(a) ~~Until July 31, 2019, if a filer submitted the initial registration statement form to the commission prior to June 30, 2019, then the updated registration statement form required by KRS 11A.211(2) shall be filed on the applicable Updated Registration Statement (Rev. 4/2016) for that filer.~~

(b) ~~If a filer submitted the initial registration statement form to the commission, then during the proceeding July 1 through July 30 following the initial registration and each year thereafter, [after June 30, 2019, then] the updated registration form required by KRS 11A.211(2) shall be filed on the applicable Updated Registration Statement as follows:~~

~~(a) [1-] For the executive agency lobbyist on:~~

- ~~1. [a-] The combined form EBEC-EAL-202; or~~
- ~~2. [b-] EBEC-EAL-203;~~

~~(b) [2-] For the employer of the executive agency lobbyist on~~

form EBEC-EAL-204; and

~~(c) [3-] For the real party in interest on form EBEC-EAL-205.~~

~~(2) The [Until June 30, 2019, the notice of termination required by KRS 11A.211(4) shall be filed on the Termination Notification as Executive Agency Lobbyist (Rev. 4/2016). After June 30, 2019, the] notice of termination required by KRS 11A.211(4) shall be filed on the Termination Notification as Executive Agency Lobbyist EBEC-EAL-206.~~

Section 4. Enforcement Procedure. (1) If an executive agency lobbyist, an employer of an executive agency lobbyist, or a real party in interest has not filed an Updated Registration Statement on or before the date the statement is due, the commission shall notify the party, by certified mail, return receipt requested, that if the statement is not filed within fifteen (15) days of the date of the receipt of notice, the commission shall levy a fine, as provided by KRS 11A.990(5).

(2) If, by the 16th day after proof of service of the certified letter is received by the commission, the commission has not received the statement that was due by July 31, the commission shall prepare and issue to the executive agency lobbyist, employer, or real party in interest an order demanding payment of the appropriate fine as required by KRS 11A.990(5). The executive agency lobbyist, employer, or real party in interest shall pay the fine within ten (10) days from the date of the order. The commission shall exonerate or reduce the fine if the commission receives evidence during the ten (10) day fine payment period indicating the filer has already filed the updated registration statement, or that the delinquency is in error.

(3) The commission also may exonerate or reduce a fine for late filing of the updated registration statement if the commission feels that exoneration is warranted, based on the circumstances, such as illness or injury, bereavement, emergency, unforeseen circumstances beyond the control of the person, bona fide effort to file on time, or similar circumstance.

(4) If the commission is not in receipt of the fine from the executive agency lobbyist, employer, or real party in interest by the tenth day after issuance of the order demanding payment of the fine, the general counsel may recommend that the commission initiate an investigation of the executive agency lobbyist, employer, or real party in interest to determine if the failure to file was intentional causing the criminal penalties set forth in KRS 11A.990(6) to apply.

Section 5. Submission. (1) The signature on the statements and forms required by this administrative regulation shall be:

- (a) In blue or black ink; or
- (b) Electronic.

(2) The forms required by this administrative regulation, which are filed with the commission, shall be submitted as follows:

- (a) By hard copy via hand-delivery or U.S. Mail to the Commission's address;
- (b) Electronically by facsimile to (502) 696-5091;
- (c) Electronically by electronic mail to ethicsfiler@ky.gov; or
- (d) Through an online system once established by the commission.

(3) The forms incorporated by reference in this administrative regulation may be reproduced by the executive agency lobbyist, the employer, or real party in interest.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial Registration Statement" - EBEC-EAL-201 (Rev. 05/2020) [rev. 04/2016];

(b) "Updated Registration Statement - Executive Agency Lobbyist" - EBEC-EAL-202 (Rev.05/2020) [rev. 04/2016];

(c) "Updated Registration Statement - Employer of Executive Agency Lobbyist" - EBEC-EAL-203 (Rev.05/2020) [rev. 04/2016];

(d) "Updated Registration Statement -Executive Agency Lobbyist/Employer Combined" - EBEC-EAL-204 (Rev.05/2020) [rev. 04/2016];

(e) "Updated Registration Statement - Real Party in Interest" - EBEC-EAL-205 (Rev.05/2020) [rev. 04/2016];

(f) "Termination Notification as Executive Agency Lobbyist" -

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- ~~EBEC-EAL-206 (Rev. 05/2020); rev. 04/2016]; and~~
- (g) "Commonwealth of Kentucky Registration Card Executive Agency Lobbyist", 9/93];
- ~~(h) "Initial Registration Statement" EBEC-EAL-201 (Rev. 05/2019);~~
- ~~(i) "Updated Registration Statement – Executive Agency Lobbyist" EBEC-EAL-202 (Rev. 05/2019);~~
- ~~(j) "Updated Registration Statement – Executive Agency Lobbyist/Employer Combined" EBEC-EAL-203 (Rev. 05/2019);~~
- ~~(k) "Updated Registration Statement – Employer of Executive Agency Lobbyist" EBEC-EAL-204 (Rev. 05/2019);~~
- ~~(l) "Updated Registration Statement – Real Party in Interest" EBEC-EAL-205 (Rev. 05/2019);~~
- ~~(m) "Termination Notification as Executive Agency Lobbyist" EBEC-EAL-206 (Rev. 05/2019); and~~
- ~~(n) "Commonwealth of Kentucky Registration Card Executive Agency Lobbyist" (Rev. 9/93)].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTOPHER L. THACKER, Chair

APPROVED BY AGENCY: May 18, 2020

FILED WITH LRC: June 9, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2020, at 1:00 p.m., via Video Teleconference platform Amazon Chime, <https://chime.aws/1349412511>, Meeting ID: 1349 41 2511, and at the primary physical location of Shared Boardroom, Capital Complex East, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. 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: Kathryn H. Gabhart, Executive Director, Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, phone (502) 564-7954, fax (502) 695-5939, email Katie.Gabhart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance to Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, and Real Parties in Interest who file an initial registration and updated registration statements with the Executive Branch Ethics Commission as required by KRS 11A.211, KRS 11A.216, KRS 11A.221, and KRS 11A.241(4).

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 11A.241(4), (5), and (6).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides guidance and forms required by KRS 11A.211, KRS 11A.216, KRS 11A.221, and KRS 11A.241(4).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently provides guidance and the forms required for Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, and Real Parties in Interest who file an initial registration and updated registrations with the Executive Branch Ethics Commission as required by KRS 11A.211, KRS

11A.216, KRS 11A.221, and KRS 11A.241(4).

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the administrative regulation by revising the forms required by KRS 11A.211, KRS 11A.216, KRS 11A.221, and KRS 11A.241(4) as required by SB 157 of the 2020 General Assembly Session, as well as necessary changes for ease of use and aesthetic functioning of the forms.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as required by SB 157 of the 2020 General Assembly Session.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to the administrative regulation conforms with the requirements of SB 157 of the 2020 General Assembly Session requiring changes to the forms submitted by Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, and Real Parties in Interest.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the administration of KRS 11A.211 as amended by SB 157 of the 2020 General Assembly Session requiring revisions in the forms submitted by Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, and Real Parties in Interest.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, Real Parties in Interest and officials of Executive Branch Agencies.

(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: All Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, Real Parties in Interest and officials of Executive Branch Agencies will be aware of the amendment of KRS 11A.211 by SB 157 of the 2020 General Assembly Session.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to file the required forms.

(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 known cost associated with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All Executive Agency Lobbyists, Employers of Executive Agency Lobbyists, Real Parties in Interest and officials of Executive Branch Agencies will have guidance and notice as to the requirements of KRS 11A.211, KRS 11A.216, KRS 11A.221, and KRS 11A.241(4) and the revised forms required by SB 157 as amending KRS 11A.211.

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

(a) Initially: Minimal costs to the Executive Branch Ethics Commission associated with the publication of training materials and conducting education already provided by the Commission's budget.

(b) On a continuing basis: Minimal costs to the Executive Branch Ethics Commission associated with the ongoing publication of training materials and conducting education already provided by the Commission's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission's existing budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This administrative regulation will not require an increase in any fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

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This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Executive Branch of state government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 11A.110(3) and 11A.080.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to the administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue? The amendment to the administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? \$500 for publications and training; funds already included in the Executive Branch Ethics Commission's budget.

(d) How much will it cost to administer this program for subsequent years? \$500 for publication and training; funds already included in the Executive Branch Ethics Commission's budget.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

AGRICULTURAL EXPERIMENT STATION (Amendment)

12 KAR 1:116. Sampling, analyzing, testing, and tolerances.

RELATES TO: KRS 250.021, 250.031, 250.041, 250.051, 250.061, 250.071, 250.081, 250.091, 250.101, 250.111

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION AND CONFORMITY: KRS 250.081(1)(c)2 requires the director to prescribe seed sampling procedures, methods of analysis, testing and examining of seed, and tolerances. This administrative regulation prescribes the methods of sampling, analyzing, and testing seed, and establishes the tolerances to be applied in the administration of the Kentucky Seed Law.

Section 1. Definition. "Kentucky Seed Law" means KRS 250.021 through 250.111 and 12 KAR Chapter 1.

Section 2. The methods of sampling, analyzing, testing, and examining seed to be applied in the administration of the Kentucky Seed Law shall be those established in Rules for Testing Seeds.

Section 3. The tolerances to be applied in the administration of the Kentucky Seed Law shall be those established in Rules for Testing Seeds.

Section 4. Incorporation by Reference. (1) "Rules for Testing Seeds", issued by the Association of Official Seed Analysts in

October 2019 [2015], is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the tolerances applied for testing seed.

(b) The necessity of this administrative regulation: Prescribes the methods of analysis, testing and examining of seed, and tolerances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Director of the Agricultural Experiment Station is required to promulgate administrative regulations as it relates to the sampling, analyzing, testing, and tolerances of seed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines how each seed kind is analyzed.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the Association of Official Seed Analysts (AOSA) reference.

(b) The necessity of the amendment to this administrative regulation: We are updating to the 2019 criteria.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the criteria for seed analysis to the most current system.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it updates to the new criteria.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which sell seed in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this

administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will set the criteria of our lab to the new AOSA standards for the seed industry.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.021, 250.031, 250.041, 250.051, 250.061, 250.071, 250.081, 250.091, 250.101, 250.111

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 1:120. Noxious weed seed.

RELATES TO: KRS 250.081(1)(c)3

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081 (1)(c)3 requires the director to designate the kinds of weed seed to be considered noxious in Kentucky and to establish their maximum permitted rate of occurrence in agricultural seed. This administrative regulation establishes those weed seed and their occurrence for the administration of the Kentucky Seed Law.

Section 1. Noxious Weed Seed. (1) The following kinds of weed seed are designated noxious in Kentucky and the maximum permitted rate of occurrence per pound of agricultural seed shall be as follows:

Name of Kind	Allowed Per Pound
Balloon vine (<i>Cardiospermum halicacabum</i>)	0
Purple moonflower (<i>Ipomoea turbinata</i>)	0
Canada thistle (<i>Cirsium arvense</i>)	0
Johnsongrass (<i>Sorghum halepense</i> and <i>sorghum alnum</i>) and perennial rhizomatous derivatives of these)	0
Quackgrass (<i>Agropyron repens</i>)	0
Annual bluegrass (<i>Poa annua</i>)	256
Buckhorn plantain (<i>Plantago lanceolata</i>)	304
Corncockle (<i>Agrostemma githago</i>)	192
Dodder (<i>Cuscuta</i> spp.)	192
Giant foxtail (<i>Setaria faberii</i>)	192
Oxeye daisy (<i>Chrysanthemum leucanthemum</i>)	256
Sorrel (<i>Rumex acetosella</i>)	256
Wild onion and wild garlic (<i>Allium</i> spp.)	96

(2) Other limitations.

(a) Seed which contains in excess of a sum total of 480 noxious weed seed per pound (subject to the above limitations) is prohibited from sale in Kentucky.

(b) There shall be no tolerance applied to prohibited noxious weed seed.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the tolerances applied for noxious weed seed.

(b) The necessity of this administrative regulation: Establishes the amounts of weed seed allowed per pound of agricultural seed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Director of the Agricultural Experiment Station is required to promulgate administrative regulations as it relates to naming seed which are to be considered noxious in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets the limits for noxious weed kinds in agricultural seed.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment updates the necessity, function and conformity statement.

(b) The necessity of the amendment to this administrative regulation: We are updating seed regulations to current format.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the necessity, function and conformity statement to the most current system.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it updates to the new criteria.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which sell seed in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will set the criteria of noxious weed seed tolerances in Kentucky.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081(1)(c)3.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION (Amendment)

12 KAR 1:125. Identification of seed not for sale.

RELATES TO: KRS 250.081(1)(c)4

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081 (1)(c)4 requires the director to [T] indicate a means for identifying seed in storage or in or consigned to a seed cleaning or processing plant, but not offered for sale in locations where some, but not all, seed is for sale. This administrative regulation establishes the proper procedures for the identification of seed for sale. [is needed to facilitate fair and efficient inspection by enforcement officers.]

Section 1. The following procedure shall be used if some, but not all, seed in or consigned to a seed cleaning or processing establishment is planned for distribution:

(1) All seed lots shall be maintained separately to prevent the accidental or mechanical mixing of different lots.

(2) All seed not intended for distribution shall be clearly identified with printed signs which indicate the owner or the specific intended use of the seed.

Section 2. All seed intended for distribution shall be plainly identified with a tag on each container, or with a lot number stenciled or taped on each container. If the seed is in a box, frame, crib, wagon, or other enclosed space, that storage space shall be construed to be a container.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 1, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurphy, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurphy

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the criteria for the identification of seed which is for sale versus seed kept in storage.

(b) The necessity of this administrative regulation: This

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administrative regulation establishes the proper procedures for the identification of seed for sale.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Director of the Agricultural Experiment Station is required to promulgate administrative regulations as it relates to distinguishing seed intended for distribution from seed not intended for distribution in establishments where only a portion of seed being conditioned or held is to be distributed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes criteria for the identification of seed to be distributed.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the necessity, function and conformity statement.

(b) The necessity of the amendment to this administrative regulation: We are updating seed regulations to current format.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the necessity, function and conformity statement to the most current system.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it updates to the new criteria.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which sell or condition seed in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will distinguish seed intended for sale from seed not intended for sale.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081(1)(c)4.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect. No effect

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION (Amendment)

12 KAR 1:130. Labeling of seed mixtures.

RELATES TO: KRS 250.081(1)(c)9

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081 (1)(c)9 requires the director to secure the efficient enforcement of the provisions of KRS 250.021 TO 250.111. This administrative regulation establishes [To prescribe] a uniform manner of avoiding contradictory information on printed seed bags and on tags attached to the printed bags in situations where analysis after bagging reveals that a mixture of seed kinds is present rather than a single seed kind.

Section 1. Labeling Tall Fescue and Orchardgrass Seed Mixtures in Printed Bags. (1) Seed of mixtures sold in a bag printed with the words "Kentucky 31 Tall Fescue" on the front (broad) side shall have a seed tag attached that complies with applicable statutes, and the words "and Orchardgrass Mixture" printed or applied by stencil on the front (broad) side of the bag in lettering that is at least one (1) inch high and located no more than three (3) inches from the "Kentucky 31 Tall Fescue" letters.

(2) Seed in a bag on which "Kentucky 31 Tall Fescue" is printed on the back (broad) side shall have the words "and Orchardgrass Mixture" printed on the back (broad) side of the bag and the words "and Orchardgrass Mixture" printed or applied by stencil on the bag in lettering that is at least one (1) inch high and located no more than three (3) inches from the "Kentucky 31 Tall Fescue" letters.

Section 2. The information on the bag of other kinds of mixtures in printed bags shall be the same as the information on the attached tag. If alteration of a printed bag is necessary to show that the seed is a mixture, the alteration shall be accomplished by use of stencil on the bag in lettering that is at least one (1) inch high and that is located no more than three (3) inches from the original lettering.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an

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opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the criteria for the labeling of seed mixtures.

(b) The necessity of this administrative regulation: This administrative regulation establishes the proper procedures for labeling of seed mixtures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Director of the Agricultural Experiment Station is required to promulgate administrative regulations as it relates to the administration KRS 250.021 to 250.111.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes criteria for the proper labeling of tall fescue and orchardgrass mixtures in printed bags.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the necessity, function and conformity statement.

(b) The necessity of the amendment to this administrative regulation: We are updating seed regulations to current format.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the necessity, function and conformity statement to the most current system.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it updates to the new criteria.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which label tall fescue and orchardgrass mixtures will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will establish labeling requirements for seed mixtures.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081(1)(c)9.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION (Amendment)

12 KAR 1:140. Permits, reports, and fees for persons using own tags.

RELATES TO: KRS 250.021, 250.031, 250.041, 250.051, 250.061, 250.071, 250.081, 250.091, 250.101, 250.111

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)7 requires the director of the Agricultural Experiment Station to promulgate procedures for obtaining a permit to label, responsibilities of permit holders, method to be used in determining inspection fees, and the procedure for permit holders to make payment of fees for distributing agricultural seed. This administrative regulation fulfills that statutory mandate.

Section 1. Obtaining Permits. (1) Application for permits to label agricultural seed shall be made on Form RS-68-01 (6/13), Application for Permit for User to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky.

(2) Application for permits to label vegetable seed, flower seed, or combination mulch, seed and fertilizer products shall be made on Form RS-68-02 (6/13), Application for Permit for User to Provide Own Labels for Vegetable Seed, Flower Seed, or Combination Mulch, Seed and Fertilizer Products Sold in Kentucky.

Section 2. Reporting Sales. (1) A person who has been granted a permit to label agricultural seed under Section 1 of this

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administrative regulation shall:

~~(a) [1.] Submit quarterly reports on Form RS-63-01 until January 1, 2017; or~~

~~2.] Submit semi-annual reports on Form RS-63-02 [beginning January 1, 2017]; and~~

(b) Pay a labeling and inspection fee determined on the basis of quantity of seed sold and on the fee schedule established in Section 3 of this administrative regulation.

~~[(2) Quarters shall be from January through March, April through June, July through September, and October through December. An added assessment of twenty-five (25) dollars or ten (10) percent of the unpaid fee, whichever is greater, shall be made for each seed quarterly report received more than forty-five (45) days after the quarter ends.]~~

~~(2)[(3)]~~ Semi-annual shall be from January through June, and July through December. An added assessment of twenty-five (25) dollars or ten (10) percent of the unpaid fee, whichever is greater, shall be made for each seed semi-annual report received more than forty-five (45) days after the reporting period ends.

Section 3. Labeling and Inspection Fee. The labeling and inspection fee for agricultural seed permit holders shall be:

(1) For packages weighing one (1) pound and up to and including twenty-five (25) pounds: eight (8) cents per package;

(2) For packages or units of seed in excess of twenty-five (25) pounds in weight and up to and including 100 pounds: twelve (12) cents per package or unit.

(a) A unit of corn shall be 80,000 seeds.

(b) A unit of soybeans shall be 140,000 seeds; and

(3) For packages in excess of 100 pounds and seed distributed in bulk:

(a) Twenty-four (24) cents per 100 pounds; or

(b) Twelve (12) cents per unit.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Permit for User to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky", RS-68-01, 6/13;

(b) "Application for Permit for User to Provide Own Labels for Vegetable Seed, Flower Seed, or Combination Mulch, Seed, and Fertilizer Products Sold in Kentucky", RS-68-02, 6/13;

~~[(c) "Seed Quarterly Report", RS-63-01, 8/13;] and~~

~~[(d)] "Seed Semi-Annual Report", RS-63-02, 8/16.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky

40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to obtain a permit to label and distribute agricultural seed in Kentucky; to pay inspection fees for agricultural seed based upon amount of seed distributed, and how to obtain a permit to label and distribute vegetable seed, flower seed, or combination mulch, seed, and fertilizer products in Kentucky.

(b) The necessity of this administrative regulation: Pursuant to KRS 250.081, the director is required to establish procedures for obtaining a permit to label, responsibilities of permit holders, method to be used in determining inspection fees, and the procedure for permit holders to make payment of fees for distributing agricultural seed. This regulation satisfies that statutory mandate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation satisfies the statutory mandate found in KRS 250.081 by establishing a fee structure for permit holders and a method for permit holders to make payment of fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The fee structure provides the necessary funding so the citizens of the Commonwealth have access to seed analyses and for the Division to successfully implement the duties of KRS 250.021 to 250.111.

(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 deletes the outdated text in the regulation.

(b) The necessity of the amendment to this administrative regulation: We are updating seed regulations to current format.

(c) How the amendment conforms to the content of the authorizing statutes: Deletes the outdated text of the regulation.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it updates to the new criteria.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which sell seed in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation establishes the criteria for permitting and registration.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 1:155. Schedule of charges for samples submitted for testing.

RELATES TO: KRS 250.021 to 250.111

STATUTORY AUTHORITY: KRS 250.081(1)(c)6

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)6 requires the director of the Agricultural Experiment Station to promulgate administrative regulations establishing charges for tests of samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory for testing. This administrative regulation establishes a schedule of charges for service tests, analysis, and examination of seed samples in the Kentucky Agricultural Experiment Station Seed Laboratory.

Section 1. Definition. "Free test" means:

- (1) A complete test consisting of a purity analysis, a noxious weed seed examination for Kentucky, and a germination test; or
- (2) A test with a cost equivalent to a complete test.

Section 2. Except as provided by KRS 250.091, which authorizes one (1) free test per year, the service charges established in this section shall be assessed for samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory.

(1) Basic charge list:

Kind of Seed	Complete Test	Purity and Noxious Weed Seed Test	Germination Only
Group 1 Corn and soybeans	\$18.00	\$9.00	\$11.00

Group 2 Small grains	\$14.00	\$7.00	\$9.00
Group 3 Tobacco	\$21.00	\$16.00	\$11.00
Group 4 Clovers, alfalfas, and lespedezas	\$18.00	\$9.00	\$11.00
Group 5 Lawn and forage grasses	\$20.00	\$14.00	\$12.00
Group 6 Native grasses, flowers, and forbs	\$40.00	\$30.00	\$30.00
Group 7 Vegetables	\$18.00	\$13.00	\$12.00
Group 8 Ornamentals (trees, shrubs, and flowers) and herbs	\$30.00	\$18.00	\$20.00

(2) Nonresidents shall be assessed an additional charge of fifteen (15) dollars per sample.

(3) A complete test shall include a purity analysis, a noxious weed seed examination (for Kentucky only), and a germination test.

(4) A purity and noxious weed test shall include a purity analysis and a noxious weed seed examination (for only those seed designated as noxious in Kentucky).

(5) In ryegrass samples, a complete test shall be assessed a charge of twenty-five (25) dollars and shall include a fluorescence test which distinguishes perennial ryegrass seed and annual ryegrass seed.

(6) Mixtures, difficult, or dirty samples may be charged an additional forty (40) dollars per hour for extra separation time.

(7) Mixtures submitted for germination testing shall be charged a fifteen (15) dollar separation fee. Each component over five (5) percent of the total in mixtures shall be charged individually for germination testing.

(8) Rush service may be provided upon request at an additional charge of twenty-five (25) dollars per sample.

(9) Samples of coated, encrusted, pelleted, film-coated, or treated seed shall be charged an additional fifteen (15) dollars for hand washing and disposal of toxic substances.

(10) The schedule of charges for special tests shall be:

(a) Noxious weed seed examinations:

- 1. Kentucky only: ten (10) dollars;
- 2. Other states: fifteen (15) dollars per state; and
- 3. All states: fifty (50) dollars;

(b) Moisture test: eight (8) dollars;

(c) Seed count per pound: ten (10) dollars;

(d) Varietal identification:

- 1. Soybean hypocotyl color test: fifteen (15) dollars;
- 2. Phenol test of wheat: eighteen (18) dollars; and
- 3. Peroxidase test of soybean: eighteen (18) dollars;

(e) Vigor tests:

- 1. Accelerated aging: eighteen (18) dollars;
- 2. Cold test: eighteen (18) dollars; and
- 3. Conductivity: eighteen (18) dollars;

(f) Tetrazolium test:

- 1. Groups 1 and 2: eighteen (18) dollars;
- 2. Groups 4, 5, and 7: thirty (30) dollars; and
- 3. Groups 3, 6, and 8: forty (40) dollars;

(g) Seed or plant tall fescue endophyte. One (1) to 100 specimens: \$125[445];

(h) Biotechnology trait identification. Herbicide bioassay: thirty (30) dollars; and

(i) Reexamination of a sample to secure information not requested initially, or any analysis or test to obtain information not specifically required by the Kentucky Seed Law, KRS 250.021 to 250.111 and 12 KAR Chapter 1, shall be assessed forty (40) dollars per hour for analytical time.

(11) Testing performed in compliance with International Seed Testing Association (ISTA) rules shall be charged fifteen (15) dollars in addition to test fees.

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(12) Testing performed in compliance with Canadian Methods and Procedures (M & P) for Testing Seed shall be charged eighteen (18) dollars in addition to test fees.

(13) Charges for kinds not listed in this subsection shall be in accord with charges made for other kinds of seed of similar size.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates and incorporates the service testing fee schedule for the Kentucky Agricultural Experiment Station Seed Laboratory, and provides requirements for developing and using the fee schedule.

(b) The necessity of this administrative regulation: Pursuant to KRS 250.081, the director is required to promulgate an administrative regulation regarding analytical charges for samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory. This regulation satisfies that statutory mandate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates an extensive fee schedule for patrons and establishes a basis for fee computation, as required by KRS 250.081.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have fee schedules to control analytical costs and fund testing offered by the Seed laboratory. Kentucky seedsmen and all citizens of the Commonwealth should have access to seed analyses services on a fair, yet affordable fee-basis and this could not happen without the fees established herein.

(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 fee schedule has been updated based on general cost accounting principles.

(b) The necessity of the amendment to this administrative regulation: The fee for one of our test increases on a yearly basis. This increase establishes our cost for the test.

(c) How the amendment conforms to the content of the authorizing statutes: The fee schedule has been appropriately updated to ensure analytical fees are fair, current, and reasonable for similar analytical services.

(d) How the amendment will assist in the effective administration of the statutes: This update will accurately reflect the cost for our lab is recovered.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Use of the Seed laboratory is strictly voluntary. Firms and individuals selecting the laboratory for analytical services will be impacted by the regulation change.

(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: Only firms and individuals selecting the laboratory for analytical services will be impacted by the regulation change.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An additional charge of ten dollars for an endophyte test will occur.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Patrons of the laboratory will receive fair, current, and reasonable fees for services provided.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? Not for this change in regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This one increase will not generate a significant increase for the Division of Regulatory Services.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-): \$250

Expenditures (+/-):

Other Explanation:

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 1:160. Seed not required to be labeled by variety name.

RELATES TO: KRS 250.081(1)(c)9
STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081 (1)(c)9 requires the director to secure the efficient enforcement of the provisions of KRS 250.021 to 250.111. This administrative regulation establishes [To designate] the kinds of seed for which labeling of variety name is not required. For all other kinds, the variety name is an essential part of the information on the label.

Section 1. The following kinds of seed are omitted from the requirement for labeling to show the variety name and the statements "Variety Unknown", "Variety Not Stated, or "VNS":

- (1) Bermudagrass (*Cynodon dactylon*).
- (2) Bluegrass, Canada (*Poa compressa*).
- (3) Bluegrass, Rough (*Poa trivialis*).
- (4) Bromegrass, Field (*Bromus arvensis*).
- (5) Buckwheat (*Fagopyrum esculentum*).
- (6) Canarygrass (*Phalaris canariensis*).
- (7) Clover, Alsike (*Trifolium hybridum*).
- (8) Fescue, Chewings (*Festuca rubra*, var *commutata*).
- (9) Fescue, Meadow (*Festuca elatior*).
- (10) Lespedeza, Korean (*Lespedeza stipulacea*).
- (11) Lespedeza, Striate (*Lespedeza striata*).
- (12) Lovegrass, Sand (*Eragrostis trichodes*).
- (13) Lovegrass, Weeping (*Eragrostis curvula*).
- (14) Millet, Browntop (*Panicum ramosum*).
- (15) Millet, Foxtail (*Setaria italica*).
- (16) Millet, Japanese (*Echinochloa crusgalli*).
- (17) Millet, Proso (*Panicum miliaceum*).
- (18) Rape (*Brassica* spp.).
 - (a) Annual (*B. napus*, var *annua*).
 - (b) Turnip, Annual or Bird (*B. campestris*).
 - (c) Turnip, Biennial (*B. campestris*, var *autumnalis*).
- (19) Redtop (*Agrostis alba*).
- (20) Sweetclover, White (*Melilotus alba*).
- (21) Sweetclover, Yellow (*Melilotus officinalis*).
- (22) Vetch, Common (*Vicia sativa*).
- (23) Vetch, Hairy (*Vicia villosa*).

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes which seed is not required to be labeled by variety name.

(b) The necessity of this administrative regulation: This administrative regulation establishes which seed does not have to be labeled by variety name.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Director of the Agricultural Experiment Station is required to promulgate administrative regulations as it relates to KRS 250.021 to 250.111.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes seed which does not have to be labeled by variety name.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the necessity, function and conformity statement. It also adds the variety not stated and VNS do not need to appear on these labels.

(b) The necessity of the amendment to this administrative regulation: We are updating seed regulations to current format.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the necessity, function and conformity statement to the most current system.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it updates to the new criteria.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which sell seed varieties which do not require a variety name will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will distinguish which seed varieties need variety statements.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 250.081(1)(c)4.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

**AGRICULTURAL EXPERIMENT STATION
(Amendment)**

12 KAR 1:170. Germination standards for flower seed.

RELATES TO: KRS 250.081(1)(c)9

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081 (1)(c)9 requires the director to secure the efficient enforcement of the provisions of KRS 250.021 to 250.111. This administrative regulation establishes [To prescribe] standards for flower seed and to list those kinds for which standard testing procedures are prescribed. The information required to be shown on the label is dependent upon whether or not standard testing procedures have been prescribed and whether or not a lot being labeled falls above or below the standard.

Section 1. Flower Seed Standards. (1) The kinds of flower seed listed below are those for which standard testing procedures have been prescribed. Common names are listed first, followed by Latin names. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, the percentage is the total of percentage germination and percentage hard seed. For other kinds, it is the percentage germination.

Kind	Germination %
Archillea (The Pearl) - Achillea ptarmica	50
African daisy - Dimorphotheca aurantiaca	55
African violet - Saintpaulia spp.	30
Ageratum - Ageratum mexicanum	60
Agrostemma (rose campion) - Agrostemma coronaria	65
Alyssum - Alyssum compactum, A. maritimum, A. procumbens, and A. saxatile	60
Amaranthus - Amaranthus spp.	65
Anagalis (Primpernel) - Anagalis arvensis, A. coerulea, and A. grandiflora	60
Anemone - Anemone coronaria, and A. pulsatilla	55
Angel's trumpet - Datura arborea	60
Arabis - Arabis alpina	60
Arctotis (African lilac daisy) - Arctotis grandis	45
Armeria - Armeria formosa	55
Asparagus, Fern - Asparagus plumosus	50
Asparagus, Sprenger - Asparagus sprengeri	55

Aster, China - Callistephus chinensis; except Pompon, Powderpuff, and Princess types	55
Aster, China - Callistephus chinensis; Pompon, Powderpuff, and Princess types	50
Aubretia - Aubretia deltoides	45
Baby Smilax - Aparagus asparagoides	25
Balsam - Impatiens balsamina	70
Begonia - (Begonia fibrous rooted)	60
Begonia - (Begonia tuberous rooted)	50
Bells of Ireland - Molucella laevis	60
Brachycome (Swan River daisy) - Brachycome iberidifolia	60
Browallia - Browallia elata and B. speciosa	65
Bupthalam (Sunwheel) - Bupthalam salicifolium	60
Calceolaria - Calceolaria spp.	60
Calendula - Calendula officinalis	65
California poppy - Eschscholtzia californica	60
Calliopsis - Coreopsis bicolor, C. drummondii, and C. elegans	65
Campanula:	
Canterbury bells - Campanula medium	60
Cup and saucer bellflower - Campanula medium calycanthema	60
Carpathian bellflower - Campanula carpatica	50
Peach bellflower - Campanula persicifolia	50
Candytuft, Annual - Iberis amara, and I. umbellata	65
Candytuft, Perennial - Iberis gibraltarica, and I. sempervirens	55
*Castor bean - Ricinus communis	60
Cathedral bells - Cobaea scandens	65
Celosia - Celosia argentea	65
Centaurea: Basket flower - Centaurea americana, Cornflower - C. cyanus, Dusty miller - C. candidissima, Royal Centaurea - C. imperialis, Sweet sultan - C. moschata, and Velvet Centaurea - C. gymnocarpa	60
Cerastium (Snow-in-summer) - Cerastium biebersteini and C. tomentosum	65
Chinese forget-me-not - Cynoglossum amabile	55
Chrysanthemum, Annual - Chrysanthmum carinatum, C. coronarium, and C. segetum	40
Cineraria - Senecio cruentus	60
Clarkia - Clarkia elegans	65
Cleome - Cleome gigantea	65
Coleus - Coleus blumei	65
Columbine - Aquilegia spp.	50
Coral bells - Heuchera sanguinea	55
Coreopsis, Perennial - Coreopsis lanceolata	40
Corn, Ornamental - Zea mays	75
Cosmos:	
Sensation, Mammoth, and Crested types - Cosmos bipinnatus; and Klondyke type - C. sulphureau	65
Crossandra - Crossandra infundibuliformis	50
Dahlia - Dahlia spp.	55
Daylily - Hemerocallis spp.	45
Delphinium, Perennial: Belladonna and Bellamosum types; Cardinal larkspur - Delphinium cardinale; Chinensis types; and Pacific giant, Gold medal, and other hybrids of D. elatum	55
Dianthus:	
Carnation - Dianthus caryophyllus	60
China pinks - Dianthus chinensis, D. heddeiwigi, and D. heddensis	70
Grass pinks - Dianthus plumarius	60
Maiden pinks - Dianthus deltoides	60
Sweet William - Dianthus barbatus	70

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Sweet Wivelsfield - <i>Dianthus allwoodi</i>	60
Didiscus (Blue lace flower) - <i>Didiscus coerulea</i>	65
Doronicum (Leopard's bane) - <i>Doronicum caucasicum</i>	60
Dracaena - <i>Dracaena indivisa</i>	55
Dragon tree - <i>Dracaena draco</i>	40
English daisy - <i>Bellis perennis</i>	55
Flax:	
Golden flax - <i>Linum flavum</i> , Flowering flax - <i>L. grandiflorum</i> , and Perennial flax - <i>L. perenne</i>	60
Flowering maple - <i>Abutilon</i> spp.	35
Foxglove - <i>Digitalis</i> spp.	60
Gaillardia, Annual - <i>Gaillardia pulchella</i> and <i>G. picta</i>	45
Gaillardia, Perennial - <i>G. grandiflora</i>	45
Gerbera (transvaal daisy) - <i>Gerbera Jamesoni</i>	60
Geum - <i>Geum</i> spp.	55
Gilia - <i>Gilia</i> spp.	65
Glosiosa daisy (rudbeckia) - <i>Echinacea purpurea</i> and <i>Rudbeckia hirta</i>	60
Gloxinia - <i>Sinningia speciosa</i>	40
Godetia - <i>Godetia amoena</i> and <i>G. grandiflora</i>	65
Gourds:	
Yellow flowered - <i>Cucurbita pepo</i> , White flowered - <i>Lagenaria siceraria</i> , and Dishcloth - <i>Luffa cylindrica</i>	70
Gypsophilia:	
Annual baby's breath - <i>Gypsophila elegans</i> ; and Perennial baby's breath - <i>G. paniculata</i> , <i>G. pacifica</i> , and <i>G. repens</i>	70
Helenium - <i>Helenium autumnale</i>	40
Helichrysum - <i>Helichrysum monstrosum</i>	60
Heliopsis - <i>Heliopsis scabra</i>	55
Heliotrope - <i>Heliotropium</i> spp.	35
Helipterum (Acroclinium) - <i>Helipterum roseum</i>	60
Hesperis (Sweet rocket) - <i>Hesperis matronalis</i>	65
*Hollyhock - <i>Althea rosea</i>	65
Hunnemania (Mexican tulip poppy) - <i>Hunnemania fumariaefolia</i>	60
*Hyacinth bean - <i>Dolichos lablab</i>	70
Impatiens - <i>Impatiens holstii</i> and <i>I. sultani</i>	55
*Ipomea:	
Cypress vine - <i>Ipomea quamoclit</i> ; Moonflower - <i>I. noctiflora</i> ; and Morning glories, Cardinal climber, Hearts and Honey vine - <i>Ipomea</i> spp.	75
Jerusalem-cross [<i>Jurusulem cross</i>] (Maltese cross) - <i>Lychnis chalcidonica</i>	70
Job's tears - <i>Coix lacrymajobi</i>	70
Kochia - <i>Kochia childsii</i>	55
Larkspur, Annual - <i>Delphinium ajacis</i>	60
Lantana - <i>Lantana camara</i> , <i>L. hybrida</i>	35
Lilium (Regal lily) - <i>Lilium regale</i>	50
Linaria - <i>Linaria</i> spp.	65
Lobelia, Annual - <i>Lobelia erinus</i>	65
Lunaria, Annual - <i>Lunaria annua</i>	65
*Lupine - <i>Lupinus</i> spp.	65
Marigold - <i>Tagetes</i> spp.	65
Marvel of Peru - <i>Mirabilis jalapa</i>	60
Matricaria (Feverfew) - <i>Matricaria</i> spp.	60
Mignonette - <i>Reseda odorata</i>	55
Myosotis - <i>Myosotis alpestris</i> , <i>M. oblongata</i> , and <i>M. palustris</i>	50
Nasturtium - <i>Tropaeolum</i> spp.	60
Nemesia - <i>Nemesia</i> spp.	65
Nemophila - <i>Nemophila insignis</i>	70
Nemophila, Spotted - <i>Nemophila maculata</i>	60
Nicotiana - <i>Nicotiana affinis</i> , <i>N. sanderae</i> , and <i>N. sylvestris</i>	65
Nierembergia - <i>Nierembergia</i> spp.	55
Nigella - <i>Nigella damascena</i>	55

Pansy - <i>Viola tricolor</i>	60
Penstemon - <i>Penstemon barbatus</i> , <i>P. grandiflorus</i> , <i>P. laevigatus</i> , and <i>P. pubescens</i>	60
Petunia - <i>Petunia</i> spp.	45
Phacelia - <i>Phacelia campanularia</i> , <i>P. minor</i> , and <i>P. tanacetifolia</i>	65
Phlox, Annual - <i>Phlox drummondii</i> (all types and varieties)	55
Physalis - <i>Physalis</i> spp.	60
Platycodon (Balloon flower) - <i>Platycodon grandiflorum</i>	60
Plumbago, Cape - <i>Plumbago capensis</i>	50
Ponytail - <i>Beaucarnea recurvata</i>	40
Poppy:	
Shirley poppy - <i>Papaver rhoeas</i> , Iceland poppy - <i>Papaver nudicaule</i> , Oriental poppy - <i>P. orientale</i> , and Tulip poppy - <i>P. glaucum</i>	60
Portulaca - <i>Portulaca grandiflora</i>	55
Primula (primrose) - <i>Primula</i> spp.	50
Pyrethrum (painted daisy) - <i>Pyrethrum coccineum</i>	60
Salpiglossis - <i>Salpiglossis gloxinaeflora</i> and <i>S. sinuata</i>	60
Salvia:	
Scarlet sage - <i>Salvia splendens</i> , and Mealycup sage (Blue bedder) - <i>Salvia farinacea</i>	50
Saponaria - <i>Saponaria ocymoides</i> and <i>S. vaccaria</i>	60
Scabiosa, Annual - <i>Scabiosa atropurpurea</i>	50
Scabiosa, Perennial - <i>Scabiosa caucasica</i>	40
Schizanthus - <i>Schizanthus</i> spp.	60
*Sensitive plant (mimosa) - <i>Mimosa pudica</i>	65
Shasta daisy - <i>Chrysanthemum maximum</i> and <i>C. leucanthemum</i>	65
Silk oak - <i>Grevillea robusta</i>	25
Snapdragon - <i>Antirrhinum</i> spp.	55
Solanum - <i>Solanum</i> spp.	60
Statice - <i>Statice sinuata</i> and <i>S. suworonii</i> (flower heads)	50
Stocks:	
Common - <i>Mathiola incana</i> and Evening scented - <i>Mathiola bicornis</i>	65
Sunflower - <i>Helianthus</i> spp.	70
Sunrose - <i>Helianthemum</i> spp.	30
*Sweet pea, Annual and Perennial other than dwarf bush - <i>Lathyrus odoratus</i> and <i>L. latifolius</i>	75
*Sweet pea, Dwarf bush - <i>Lathyrus odoratus</i>	65
Tahoka daisy - <i>Machaeathera tanacetifolia</i>	60
Thunbergia - <i>Thunbergia alata</i>	60
Torch flower - <i>Tithonia speciosa</i>	70
Torenia (Wishbone flower) - <i>Torenia fournieri</i>	70
Tritoma - <i>Kniphofia</i> spp.	65
Verbena, Annual - <i>Verbena hybrida</i>	35
Vinca - <i>Vinca rosea</i>	60
Viola - <i>Viola cornuta</i>	55
Virginian stocks - <i>Malcolmia maritima</i>	65
Wallflower - <i>Cheiranthus allioni</i>	65
Yucca (Adam's needle) - <i>Yucca filamentosa</i>	50
Zinna (except <i>Linearis</i> and <i>Creeping</i>) <i>Zinnia angustifolia</i> , <i>Z. elegans</i> , <i>Z. grandiflora</i> , <i>Z. gracillima</i> , <i>Z. haegeana</i> , <i>Z. multiflora</i> , and <i>Z. pumila</i>	65
<i>Zinnia</i> , <i>Linearis</i> and <i>Creeping</i> - <i>Zinnia linearis</i> and <i>Sanvitalia procumbens</i>	50
All other kinds	50

(2) A mixture of kinds of flower seed will be considered to be below the standard if the germination of any kind or combination of kinds constituting twenty-five (25) percent or more of the mixture by number is below standard for the kind or kinds

involved.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates the germination standards for flower seed.

(b) The necessity of this administrative regulation: To establish germination standards for flower seed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Director of the Agricultural Experiment Station is required to promulgate administrative regulations for germination standards of flower seed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes germination standards for flower seed.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the necessity, function and conformity statement.

(b) The necessity of the amendment to this administrative regulation: We are updating seed regulations to current format.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the necessity, function and conformity statement to the most current system.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it updates to the new criteria.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which sell flower seed in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): This is a national standard for the industry.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081(1)(c)4.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION (Amendment)

12 KAR 1:175. Seed certification in Kentucky.

RELATES TO: KRS 250.081(1)(c)1

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)1 requires the director to establish seed certification standards. This administrative regulation establishes [To prescribe] the procedure for certifying seed for varietal purity in Kentucky. Certification assures genetic identity and purity of superior plant varieties.

Section 1. Certification Procedure. (1) The procedures and standards established in the Kentucky Certified Seed Handbook shall be applied to all seed certified in Kentucky.

(2) Incorporation by reference.

(a) "Kentucky Certified Seed Handbook 2020[~~Kentucky Seed Certification Standards~~], Kentucky Seed Improvement Association, 3250 Iron Works Pike, Unit 13, [P. O. Box 42008,

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Lexington, Kentucky, ~~40511 [June 18, 1994]~~ is incorporated by reference.

(b) This material [document] may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, ~~103[404]~~ Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: Prescribes the procedures for certifying seed varietal purity.

(b) The necessity of this administrative regulation: Assures the genetic identity and purity of plant varieties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 250.081(1)(c)1 the Director of the Agricultural Experiment Station is required to promulgate administrative regulations to establish seed certification standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets certification standards.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the certification standards.

(b) The necessity of the amendment to this administrative regulation: These are the only seed certification standards..

(c) How the amendment conforms to the content of the authorizing statutes: Updates the certification standards used by the Kentucky Seed Improvement Association.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the certification body and the regulated industry as it updates the standards which have not been updated since 1994.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which certify seed in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities

identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will broaden the numbers of seed varieties which can be certified in Kentucky.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Seed Improvement Association's regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.081(1)(c)1

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION (Amendment)

12 KAR 4:080. Plant nutrient[nutrients] guarantees and labeling.

RELATES TO: KRS 250.366(7), 250.371 – 250.451

STATUTORY AUTHORITY: KRS 250.366(7), 250.421

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.366(7) authorizes the Kentucky Agricultural Experiment Station Director to promulgate administrative regulations for the inspection and analysis of plant nutrient guarantees. KRS 250.421 requires the director to promulgate administrative regulations necessary to implement KRS 250.371 through

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250.451. This administrative regulation establishes requirements for plant nutrient labeling requirements.

Section 1. Plant Nutrient Guarantees. Plant nutrients, additional to nitrogen, phosphorus, and potassium, referenced by fertilizer labeling or information provided with a fertilizer shall be registered and guaranteed pursuant to this administrative regulation. Except guarantees for water-soluble nutrients labeled for hydroponic or continuous liquid feed programs and for potting soils, minimum elemental percentages shall be as established in the Table established in this paragraph.

Element	Percent
Calcium (Ca)	1.00[00]
Magnesium (Mg)	0.50[00]
Sulfur (S)	1.00[00]
Boron (B)	0.02[00]
Chlorine (Cl)	0.10[00]
Cobalt (Co)	0.0005
Copper (Cu)	0.05[00]
Iron (Fe)	0.10[00]
Manganese (Mn)	0.05[00]
Molybdenum (Mo)	0.0005
Nickel (Ni)	0.0010
Sodium (Na)	0.10[00]
Zinc (Zn)	0.05[00]

(1) Guarantees and claims shall not be referenced by fertilizer labeling or information provided with a fertilizer for elements other than those established in the Table established in this subsection.

(2) Except for nitrogen, phosphorus, and potassium, if present and that shall be listed first, guaranteed elements referenced by fertilizer labeling or information provided with a fertilizer shall be listed in the order established in the Table established in this subsection.

(3) The elements established in this subsection shall be guaranteed on their elemental basis and are the only ones that will be accepted.

(4) Sources of the elements guaranteed and proof of availability shall be provided upon request

Section 2. Fertilizer Labels

(1) Fertilizer labels or information provided with a fertilizer shall be legible and conspicuous and shall include:

(a) Net Weight; and

(b) Brand and grade, except grade shall not be required if primary nutrients are not claimed; and

(c) Under the heading of Guaranteed Analysis:

Total Nitrogen (N)	%
Available Phosphate (P ₂ O ₅)	%
Soluble Potash (K ₂ O)	%
Other Nutrients, Elemental Basis	%

1. If the percentage is zero, the nutrient shall be omitted from the statement, except in nutrient guarantee breakdowns.

2. If the chemical forms of nitrogen are claimed, the form shall be guaranteed in the format established in the Table established in this subparagraph, and the percentages of the individual forms shall add up to the total nitrogen percentage. Implied order of the forms of nitrogen is not intended.

	Total Nitrogen (N)	%
%	Ammoniacal Nitrogen	
xc%	Nitrate Nitrogen	
%	Water Insoluble Nitrogen	
%	Urea Nitrogen	
%	Other Recognized and Determinable Forms of Nitrogen	

(d) The source or sources of the guaranteed elements that, if shown on the fertilizer labeling or information provided with a fertilizer, shall be listed below the completed guaranteed analysis statement; and

(e) Name and address of registrant or licensee.

(2) For packaged products, Fertilizer Labels shall:

(a) Appear on the front or back of the package;

(b) Occupy at least the upper third of a side of a package; or

(c) Be printed on a tag and attached to the package.

(3) If the chemical form of a plant nutrient is guaranteed, the percentage for each component shall be shown before the name of the form, as in the following example:

Total Nitrogen (N)	34%
17% Nitrate Nitrogen	
17% Ammoniacal Nitrogen	
Magnesium (Mg)	2.0%
1% Water Soluble Magnesium (Mg)	
Sulfur (S)	10.0%
5% Free Sulfur (S)	
5% Combined Sulfur (S)	
Iron (Fe)	2.0%
2% Chelated Iron (Fe)	

Section 3. Beneficial Substances and Beneficial Compounds.

(1) Beneficial substances or beneficial compounds guarantees shall be listed below the guaranteed analysis statement under one of the following headings: "Also Contains Beneficial Substances", "Also Contains Beneficial Compounds", or "Also Contains NonPlant Food Ingredients".

(2) The percentage for each beneficial substance or beneficial compound shall be shown after the name of the form, as in the following examples:

(a) Also Contains Beneficial Substances (Compounds)

Beneficial Substance	% or acceptable units
Purpose Statement:	

(b) Also Contains NonPlant Food Ingredients

Beneficial Substance	% or acceptable units
Purpose Statement:	

(3) For the beneficial substance, Silicon, the guarantee shall be "Soluble Silicon." The method of determination of Soluble Silicon shall be from the Journal of AOAC International, Volume 96, No.2, 2013.

Section 4. The term of "percentage" by symbol or word, when used on fertilizer labeling shall represent only the amount of individual plant nutrients in relation to the total product by weight.

Section 5. Incorporation by Reference

(1) "Journal of AOAC International", Volume 96, No. 2, 2013, "A 5-Day Method for Determination of Soluble Silicon Concentrations in Nonliquid Fertilizer Materials Using a Sodium Carbonate-Ammonium Nitrate Extractant Followed by Visible Spectroscopy with Heteropoly Blue Analysis: Single-Laboratory Validation" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [To prescribe in detail when and how plant nutrients in addition to nitrogen, phosphorus and potassium shall be registered and guaranteed.

Section 1. Plant nutrients in addition to nitrogen, phosphorus and potassium when mentioned in any form or manner shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed and proof of availability shall be provided the director upon request. Except guarantees for those water soluble nutrients labeled for hydroponic or continuous liquid feed programs, and guarantees for potting soils, the minimum percentages which will be accepted for registration are as follows:]

Section 2. Guarantees or claims for the plant nutrients listed in Section 1 of this administrative regulation are the only ones which will be accepted. Proposed labels and directions for the use of the fertilizer shall be furnished with the application for registration upon request. Any of the elements listed in Section 1 of this administrative regulation which are guaranteed shall appear in the order listed and shall immediately follow guarantees for the primary nutrients of nitrogen, phosphorus and potassium if present.]

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DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes guaranteeing and labeling of plant nutrient guarantees.

(b) The necessity of this administrative regulation: Creates a format to guarantee and label plant nutrients for fertilizer labels.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 250.421 the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation creates a format to guarantee and label plant nutrient guarantees.

(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 consolidates and updates the labeling of plant nutrients.

(b) The necessity of the amendment to this administrative regulation: The amendment provides for the proper labeling of fertilizers sold in the Commonwealth of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: Updates labeling requirements used to regulate the fertilizer industry.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it brings in new labeling requirements as outlined from a national format to label.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register fertilizer labels in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Proper labeling of fertilizer will be required by the regulated industry. If they are following a national format by the Association of American Plant Food Control Officials, no new action will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky will be closer to the national format for labeling fertilizer.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.366(7), 250.421.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION (Amendment)

12 KAR 4:100. Slowly released nutrients; labeling.

RELATES TO: KRS 250.366(7), (17), (18)

STATUTORY AUTHORITY: KRS 250.421

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.421 requires the director to promulgate administrative regulations necessary to implement KRS 250.371 through 250.451. This administrative regulation establishes requirements for referencing slowly released nutrients on fertilizer labels or information provided with a fertilizer [To interpret the fertilizer law as it relates to the proper labeling of slowly released nutrients].

Section 1. A fertilizer label shall not state or imply [No fertilizer labeling shall bear a statement that connotes or implies] that certain plant nutrients contained in a fertilizer are released slowly

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over a period of time, unless the nutrient or nutrients are identified and guaranteed at a level of at least fifteen (15) percent of the total guarantee for that nutrient or nutrients[nutrient(s)].

Section 2. Types of products with recognized slow release properties shall be ~~recognized~~ are:

(1) Water insoluble (Nitrogen products only), such as natural organics, urea form materials, urea-formaldehyde [products], isobutylidene diurea, and oxamide. "AOAC International method 945.01" shall be used to determine the water insoluble nitrogen[, etc.];

(2) Coated slow release, such as sulfur coated urea and other encapsulated soluble fertilizers. "AOAC International method 970.04" shall be used to confirm the coated slow release nutrients and others whose slow release characteristics depend on particle size;

(3) Occluded slow release, ~~if~~[~~where~~] fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles. "AOAC International method 970.04" shall be used to confirm the occluded slow release nutrients and others whose slow release characteristics depend on particle size; and

(4) Products containing water soluble slowly available nitrogen, such as urea-formaldehyde products, methylenediurea (MDU), dimethylenetriurea (DMTU), dicyanodiamide (DCD), and urea-triazone solutions[, etc.].

(5) (a) The terms, "water insoluble," "coated slow release," "slow release," "controlled release," "slowly available water soluble," and "occluded slow release" shall be ~~are~~ accepted as descriptive of these products, ~~if~~[~~provided~~] the manufacturer can show a testing program substantiating the claim[~~(testing under guidance of Kentucky Agricultural Experiment Station personnel or a recognized reputable researcher acceptable to the director)~~].

(b) In addition to the requirements established in paragraph (a) of this subsection, the manufacturer shall provide a laboratory procedure[, acceptable to the director] for evaluating the release characteristics of the product or products[product(s)] shall also be provided by the manufacturer].

Section 3. Nitrogen. (1) If an amount of nitrogen is designated as organic, then the water insoluble nitrogen or the slow release nitrogen guarantee shall not be less than sixty (60) percent of the nitrogen so designated.

(2) Coated urea shall not be included in meeting the sixty (60) percent requirement.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:~~[Until more appropriate methods are developed,]~~

(a) AOAC International method 970.04 in the Official Methods of Analysis, 15th Edition (1990); and ~~[is to be used to confirm the coated slow release and occluded slow release nutrients and others whose slow release characteristics depend on particle size.]~~

(b) "AOAC International method 945.01" [~~shall be used to determine the water insoluble nitrogen of organic materials. AOAC International methods 970.04 and 945.01 are~~] in the Official Methods of Analysis, 15th Edition (1990) [~~and are hereby incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, [is available for inspection and copying] at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building, [University of Kentucky] Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [during regular business hours of 8 a.m. to 5 p.m., Monday through Friday.]

DR. ROBERT HOUTZ, Director
APPROVED BY AGENCY: June 11, 2020
FILED WITH LRC: June 11, 2020 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals

interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes guaranteeing and labeling of slowly released plant nutrients.

(b) The necessity of this administrative regulation: Creates a format to guarantee and label slowly released plant nutrients for fertilizer labels.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 250.421 the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation creates a format to guarantee and label slowly released plant nutrients.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates procedures used to test for slowly available guarantees.

(b) The necessity of the amendment to this administrative regulation: The amendment provides for the proper labeling and testing of slowly release plant nutrients sold in the Commonwealth of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: Updates labeling and testing requirements used to regulate the fertilizer industry.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it brings in new labeling and testing requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register fertilizer labels in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Proper labeling of fertilizer will be required by the regulated industry. If they are following a national format by the Association of American Plant Food Control Officials, no new action will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky will be closer to the national format for labeling and testing of slowly release plant nutrients.

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

- (a) Initially: No cost
- (b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.421.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

- Revenues (+/-):
- Expenditures (+/-):
- Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 4:110. [Terms and] Definitions for 12 KAR Chapter 4.

RELATES TO: KRS 250.406

STATUTORY AUTHORITY: KRS 250.421

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.421 requires the director to promulgate administrative regulations necessary to implement KRS 250.371 through 250.451. This administrative regulation establishes definitions for terms used in 12 KAR Chapter 4. [To utilize standard terms and definitions which reduces regulatory problems for companies selling fertilizer in Kentucky and other states.]

Section 1. Definitions. Definitions for 12 KAR Chapter 12 shall be the Official Terms and Official Fertilizer Definitions published by the Association of American Plant Food Control Officials.

Section 2. Incorporation by Reference. (1) "Official Terms and Official Fertilizer Definitions published by the Association of

American Plant Food Control Officials," 2020 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. (4) "Acid-forming fertilizer" means a fertilizer capable of increasing the residual acidity of soil.

(2) "Acidulated bone" means a fertilizer made from ground bone or bone meal that has been treated with sulfuric acid.

(3) "Acidulated fish tankage" means a fertilizer that is derived from rendered fish or fish scrap treated with sulfuric acid.

(4) "Activated sewage" means a fertilizer made from sewage freed from grit and coarse solids and aerated after being inoculated with microorganisms. The resulting flocculated organic matter is withdrawn from the tanks, filtered with or without the aid of coagulants, dried, ground, and screened.

(5) "Ammoniated superphosphate" means a fertilizer obtained when superphosphate is treated with ammonia or with solutions which contain ammonia and other compounds of nitrogen. The guaranteed percentages of nitrogen and of available phosphate shall be stated as part of the name.

(6) "Ammonium nitrate" means a fertilizer that is chiefly the ammonium salt of nitric acid. It shall contain not less than thirty-three (33) percent nitrogen, one-half (1/2) of which is in the ammonium form and one-half (1/2) in the nitrate form.

(7) "Ammonium phosphate (fertilizer grade)" means a fertilizer obtained when phosphoric acid is treated with ammonia (anhydrous or aqueous), and consists principally of monoammonium phosphate and diammonium phosphate or a mixture of these two (2) salts. The guaranteed percentage of nitrogen and of available phosphate shall be stated as part of the name.

(8) "Ammonium phosphate-sulfate (fertilizer grade)" means a fertilizer obtained when a mixture of phosphoric acid and sulfuric acid is treated with ammonia. It consists principally of a mixture of ammonium phosphate and ammonium sulfate. The guaranteed percentages of nitrogen and of available phosphate shall be stated as a part of the name.

(9) "Ammonium sulfate nitrate" means a fertilizer that is a double salt of ammonium sulfate and ammonium nitrate, which are present in equal molecular proportions. It shall contain not less than twenty-six (26) percent nitrogen, one-fourth (1/4) of which is in the nitrate form and three-fourths (3/4) in the ammonium form.

(10) "Ammonium thiosulfate (fertilizer grade)" means a commercial fertilizer composed principally of (NH₄)₂S₂O₃. The guaranteed percentages of nitrogen and sulfur shall be stated as part of the name.

(11) "Animal manure" means a fertilizer derived from the excreta of animals, together with whatever bedding materials are needed to follow good dairy barn, feed lot, poultry house, etc., practice in order to maintain proper sanitary conditions.

(12) "Available phosphate" means the sum of the water soluble and the citratesoluble phosphate in a fertilizer.

(13) "Basic lime phosphate (lime-based superphosphate)" means a superphosphate to which liming materials have been added at least six (6) percent in excess of the quantity required to convert all water soluble phosphate to the citratesoluble form.

(14) "Basic phosphate slag" means a fertilizer that is a by-product obtained in the manufacture of steel from phosphatic iron ores. The product shall:

(a) Contain no admixture of materials other than those resulting from the original process of manufacture;

(b) Contain not less than twelve (12) percent total phosphate of which at least eighty (80) percent shall be available phosphate; and

(c) Be ground so that not less than ninety (90) percent passes through a U.S. Standard No. 50 sieve (300 um opening) and seventy (70) percent of the material passes through a U.S. Standard No. 100 sieve (150 um opening). Any basic phosphate slag not conforming to this definition shall be designated low phosphate.

(15) "Bat guano" means partially decomposed bat manure.

(16) "Calcined phosphate" means a fertilizer made from phosphate rock which has been heated, with or without one (1) or more catalysts or reagents, sufficient to volatilize and remove most or all organic, carbonate, fluoride, and other impurities, and/or thermally altered to more available calcium phosphate compounds, depending on the process. Included are compounds known as fused tricalcium phosphate, defluorinated phosphate, rhenania phosphate, and various trade names. A significant portion of the phosphate is citrate soluble and such percentage shall be stated as part of the brand name.

(17) "Calcium metaphosphate" means a fertilizer that is a vitreous product substantially free from crystalline phosphates, resulting from the treatment of phosphate rock with gaseous phosphorus pentoxide at high temperatures. The guaranteed percentage of available phosphate shall be stated as part of the name.

(18) "Calcium nitrate" means a fertilizer that is chiefly the calcium salt of nitric acid. It shall contain not less than fifteen (15) percent nitrate nitrogen.

(19) "Chelate" means the type of compound or chemical union in which a central metallic ion is joined to a chelating agent in the same molecule by two (2) or more bonds. Such linkages result in the formation of one (1) or more heterocyclic rings in which the metal is part of the ring.

(20) "Chelated plant nutrients" means metallic secondary nutrients and micronutrients which have reacted with chelating agents and have the property of being available under pH conditions in which the nutrients normally form insoluble compounds.

(21) "Chelating agent" means a compound having two (2) or more sites of attachment to a metallic ion to form a chelate. Examples are EDTA (ethylenediaminetetraacetic acid), NTA (nitrilo-triacetic acid), polyphosphoric acid, proteins and polyflavonoids.

(22) "Citrate soluble phosphate" means that part of the total phosphate in a fertilizer that is insoluble in water but soluble in a solution of citrate of ammonia according to AOAC International Method 960.01.

(23) "Coated slow release fertilizer" means a fertilizer containing sources of water soluble nutrients, release of which in the soil is controlled by a coating applied to the fertilizer.

(24) "Compost" means a biologically stable material derived from the composting process.

(25) "Composting" means the biological decomposition of organic matter which may be accomplished by mixing and piling in such a way to promote aerobic and/or anaerobic decay. The process inhibits pathogens, viable weed seeds, and odors.

(26) "Continuous liquid feed" means the external application of water soluble nutrients in the irrigation water every time the plant requires water.

(27) "Crude, inert, or slow-acting nitrogenous materials" means low value fertilizers made from unprocessed organic substances relatively high in nitrogen but having nitrogen activity indexes of less than fifty (50) percent by the alkaline (AOAC International Method 920.07) and less than eighty (80) percent by the neutral (AOAC International Method 920.06) permanganate methods.

(28) "Cyanamide" means a commercial product consisting principally of calcium cyanamide (CaNCN) and carbon and it shall contain not less than nineteen and five-tenths (19.5) percent nitrogen.

(29) "DAP (fertilizer grade)" means a fertilizer composed of ammonium phosphates, principally diammonium phosphate, resulting from the ammoniation of phosphoric acid. It may contain up to two (2) percent nonammoniacal nitrogen. The guaranteed percentage of nitrogen and available phosphate shall be stated as part of the name.

(30) "Dicalcium phosphate" means a manufactured fertilizer consisting chiefly of dicalcic salt of phosphoric acid.

(31) "Dicyanodiamide (cyanoguanidine)" means a fertilizer that is a water soluble organic compound of formula $C_2N_4H_4$ which contains at least sixty five (65) percent nitrogen. It is a source of slowly available nitrogen.

(32) "Dimethylenetriurea (DMTU)" means a fertilizer that is a

water soluble condensation product resulting from the reaction of two (2) molecules of formaldehyde with three (3) molecules of urea, with the elimination of two (2) molecules of water. It has a minimum total nitrogen content of forty-one (41) percent and is a source of slowly available nitrogen.

(33) "Double sulfate of potash and magnesia (langbeinite)" means a fertilizer containing not less than twenty-one (21) percent soluble potash (K_2O) nor less than fifty-three (53) percent sulfate of magnesia and not more than two and one-half (2.5) percent chlorine.

(34) "Dried blood" means a fertilizer that is the collected blood of slaughtered animals, dried and ground and containing not less than twelve (12) percent nitrogen.

(35) "Fertilizer formula" means the quantity and analysis of the crude stock materials used in making a mixed fertilizer.

(36) "Filler" means any substance added to fertilizer materials to provide bulk, prevent caking or serve some purpose other than providing essential plant nutrients.

(37) "Fish tankage" means a fertilizer derived from dried, ground, rendered or unrendered whole fish or fish scrap.

(38) "Garbage tankage" means the rendered, dried and ground product derived from waste household food materials.

(39) "Granular fertilizer" means a fertilizer in which ninety-five (95) percent or more of the product is retained on a series of sieves within the range of U.S. No. 4 (4.75 mm opening) to and including U.S. No. 20 (0.850 mm opening) and in which the largest particle passes through a sieve having an opening not larger than four (4) times that of the sieve which retains ninety-five (95) percent or more of the product.

(40) "Ground raw bone" means a fertilizer made from ground animal bones that have not been previously steamed under pressure, heated, or otherwise manipulated.

(41) "Ground sterilized bone" means a fertilizer made from ground animal bones or bone meal that have been previously steamed under pressure, heated, or rendered sterile in some other acceptable manner.

(42) "Hoof and horn meal" means a fertilizer derived from processed dried and ground hoofs and horns.

(43) "Hydroponics" means a system in which water soluble nutrients are placed in intimate contact with the plant's root system, being grown in an inert supportive medium which supplies physical support for the roots but which does not add or subtract plant nutrients.

(44) "Isobutyridene diurea" means a fertilizer that is the condensation product of isobutyraldehyde and urea having a minimum total nitrogen content of thirty (30) percent. It is a source of slowly available nitrogen by virtue of particle size, solubility decreasing with increase in particle size. Material conforming to the description of a "granular fertilizer" will have ninety (90) percent of its nitrogen content in the water insoluble form prior to grinding as tested by AOAC International Method 945.01.

(45) "Kainit" means a fertilizer that is a potash salt containing potassium and sodium chlorides and sometimes sulfate of magnesia with not less than twelve (12) percent soluble potash (K_2O).

(46) "Kelp (seaweed)" means a fertilizer derived from the dried marine algae of the botanical divisions of Rhodophyta (red algae), Phaeophyta (brown algae), and Chlorophyta (green algae).

(47) "Liquid fertilizer" means a fluid fertilizer in which the plant nutrients are in true solution.

(48) "Magnesium sulfate" means a fertilizer consisting chiefly of the chemical compound, magnesium sulfate, with or without combined water, such as, epsom salts ($MgSO_4 \cdot 7H_2O$), kieserite ($MgSO_4 \cdot H_2O$) and calcined kieserite ($MgSO_4$).

(49) "Manganese sulfate" means a fertilizer consisting of anhydrous manganese sulfate ($MnSO_4$).

(50) "Manipulation" means processed or treated in any manner, including drying to a moisture content of less than thirty (30) percent, composting, bagging, leaching, pelleting, dissolution and recrystallization.

(51) "MAP (fertilizer grade)" means a fertilizer composed of ammonium phosphates, principally monoammonium phosphate, resulting from the ammoniation of phosphoric acid. The

guaranteed percentage of nitrogen and available phosphate shall be stated as part of the name.

(52) "Melamine" means a fertilizer that is a sparingly soluble organic compound of formula $C_3H_6N_6$ which contains at least sixty-six (66) percent nitrogen. (CAS No. 10878-1-2,4,6 triamino-1,3,5-triazine, triamino-s-triazine).

(53) "Methylenediurea (MDU)" means a fertilizer that is a water soluble condensation product resulting from the reaction of one (1) molecule of formaldehyde with two (2) molecules of urea, with the elimination of one (1) molecule of water. It has a minimum total nitrogen content of forty-two (42) percent and is a source of slowly available nitrogen.

(54) "Micronutrients" means the essential plants nutrients of boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium and zinc.

(55) "Mine run potash salts" means fertilizers that are potash salts containing a high percentage of chloride and from twenty (20) percent to thirty (30) percent soluble potash (K_2O).

(56) "Muriate of potash (commercial potassium chloride)" means a fertilizer that contains forty-eight (48) percent to sixty-two (62) percent soluble potash (K_2O) chiefly as chloride.

(57) "Natural base fertilizer" means a mixed fertilizer where more than half of the fertilizer materials is natural and where more than half of the sum of the guaranteed primary nutrient percentages is derived from natural materials.

(58) "Natural fertilizer" means a fertilizer composed only of natural organic and/or natural inorganic fertilizer materials and natural fillers.

(59) "Natural inorganic fertilizer" means a mineral nutrient source that exists in or is produced by nature and may be altered from its original state only by physical manipulation.

(60) "Natural organic fertilizers" means organic fertilizers derived from either plant or animal products. These fertilizers:

(a) May be subjected to biological degradation processes under normal conditions of aging, rainfall, sun-curing, air-drying, composting, rotting, enzymatic, or anaerobic/aerobic bacterial action, or any combination of these; and

(b) Shall not be mixed with synthetic materials or changed in any physical or chemical manner from their initial state except by manipulations such as drying, cooking, chopping, grinding, shredding, hydrolysis, or pelleting.

(61) "Nitrate of potash or potassium nitrate" means a fertilizer that is chiefly the potassium salt of nitric acid. It shall contain not less than twelve (12) percent nitrogen and forty-four (44) percent soluble potash.

(62) "Nitrate of soda or sodium nitrate" means a fertilizer that is chiefly the sodium salt of nitric acid. It shall contain not less than sixteen (16) percent nitrate nitrogen and twenty-six (26) percent sodium.

(63) "Nitrate of soda potash or sodium and potassium nitrate" means a fertilizer that is chiefly the sodium and potassium salts of nitric acid. It shall contain not less than fifteen (15) percent nitrate nitrogen, ten (10) percent soluble potash and eighteen (18) percent sodium.

(64) "Nitrogen stabilizer" means a substance added to a fertilizer which extends the time the nitrogen component of the fertilizer remains in the soil in the ammoniacal form.

(65) "Nitrophosphate" means a fertilizer obtained by acidulation of phosphate rock with nitric acid resulting in a complex mixture of nitrates and phosphates that does not contain nitrate nitrogen and phosphorus in the same molecule. The process is subject to modifications designed to remove the hygroscopic calcium nitrate formed such as ammoniation, physical separation, coacidulation with sulfuric or phosphoric acids, or subsequent treatment with carbon dioxide.

(66) "Nonacid-forming fertilizer" means a fertilizer that is not capable of increasing the residual acidity of the soil.

(67) "Organic base fertilizer" means a mixed fertilizer where more than half of the fertilizer materials is organic and where more than half of the sum of the guaranteed primary nutrient percentages is derived from organic materials.

(68) "Organic fertilizer" means a fertilizer containing carbon combined covalently with one (1) or more elements essential for plant growth other than hydrogen and oxygen.

(69) "Oxamide (fertilizer grade)" means a fertilizer that is the diamide of oxalic acid of the formula $C_2H_4N_2O_2$ which contains twenty-eight (28) to thirty-two (32) percent nitrogen. It is a source of slowly available nitrogen.

(70) "Peat" means the partly decayed vegetable matter of natural occurrence. It is composed chiefly of organic matter that contains some nitrogen of low activity.

(71) "Pelletized fertilizer" means a fertilizer whose physical form is uniform in size and usually of globular shape containing one (1) or more nutrients produced by one (1) of several methods including:

(a) Solidification of a melt while falling through a countercurrent stream of air;

(b) Dried layers of slurry applied to recycling particles;

(c) Compaction;

(d) Extrusion; and

(e) Granulation.

(72) "Phosphate" means the phosphorus in a fertilizer that is designated and guaranteed as equivalent to phosphorus pentoxide (P_2O_5).

(73) "Phosphate rock" means a natural rock containing one (1) or more calcium phosphate minerals of sufficient purity and quantity to permit its use, either directly or after concentration, in the manufacture of commercial fertilizers.

(74) "Polymer coated fertilizer" means a coated slow release fertilizer consisting of fertilizer particles coated with a polymer (plastic) resin and is a source of slowly available plant nutrient(s).

(75) "Polymer coated urea (PCU)" means a coated slow release fertilizer consisting of urea particles coated with a polymer (plastic) resin. It typically contains about forty (40) percent nitrogen and is a source of slowly available nitrogen.

(76) "Polyphosphates" means a general class of phosphatic fertilizers made from the salts of any of a series of polyphosphoric acids, whose molecular structure contains two (2) or more phosphorus atoms linked by oxygen. Solutions may contain several ionic species such as orthophosphates, pyrophosphates, and polyphosphates containing three (3) or more phosphorus atoms, commonly known as tripolyphosphates or tetrapolyphosphates and water.

(77) "Potash" means the potassium in a fertilizer that is designated and guaranteed as equivalent to potassium oxide (K_2O).

(78) "Potting soil" means a material suitable for holding and growing potted plants and usually made from natural materials. It may include fertilizers, pesticides and/or soil amendments.

(79) "Precipitated phosphate" means a fertilizer that consists mainly of dicalcium phosphate obtained by neutralizing with calcium hydroxide the acid solution of either phosphate rock or processed bone.

(80) "Primary nutrients" means nitrogen (N), available phosphate (P_2O_5) or phosphorus (P), and soluble potash (K_2O) or potassium (K).

(81) "Process tankage" means a fertilizer made under steam pressure from crude inert nitrogenous materials, with or without the use of acids or bases, for the purpose of increasing the activity of nitrogen. These products shall be called "process tankage" with or without further qualification and the water insoluble nitrogen shall test at least fifty (50) percent active by the alkaline permanganate method (AOAC International Method 920.07), or eighty (80) percent active by the neutral permanganate method (AOAC International Method 920.06).

(82) "Secondary nutrients" means the essential plant nutrients of calcium, magnesium, and sulfur.

(83) "Sheep manure wool waste" means a fertilizer that is the by-product from wool-carding establishments consisting chiefly of sheep manure, seeds, and wool fiber.

(84) "Slow or controlled release fertilizer" means a fertilizer containing a plant nutrient in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant significantly longer than a reference "rapidly available nutrient fertilizer" such as ammonium nitrate, urea, ammonium phosphate, or potassium chloride. Such delay of initial availability or extended time of continued availability may occur by a variety of mechanisms including:

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(a) ~~Controlled water solubility of the material by semipermeable coatings, occlusion, or by inherent water insolubility of polymers, natural nitrogenous organics, protein materials, or other chemical forms;~~

(b) ~~By slow hydrolysis of water soluble low molecular weight compounds; or~~

(c) ~~By other unknown means.~~

(85) ~~"Soft phosphate with colloidal clay" means a very finely divided, low-analysis fertilizer that is a byproduct from mining Florida rock phosphate by a hydraulic process in which the colloidal materials settle at points in artificial basins farthest from the washer, and are later removed after the natural evaporation of the water.~~

(86) ~~"Slurry fertilizer" means a fluid fertilizer containing dissolved and undissolved plant nutrient materials which requires continuous mechanical agitation to assure homogeneity.~~

(87) ~~"Soluble potash" means the potash contained in a fertilizer which is soluble in aqueous ammonium oxalate, aqueous ammonium citrate, or water, according to an applicable AOAC International Method.~~

(88) ~~"Stabilized nitrogen fertilizer" means a fertilizer to which a nitrogen stabilizer has been added.~~

(89) ~~"Sulfate of ammonia or ammonium sulfate" means a fertilizer that is chiefly the ammonium salt of sulfuric acid. It shall contain not less than twenty and five-tenths (20.5) percent nitrogen.~~

(90) ~~"Sulfate of potash (commercial potassium sulfate)" means a fertilizer containing not less than forty-eight (48) percent soluble potash (K₂O), chiefly as sulfate, and not more than two and one-half (2.5) percent chlorine.~~

(91) ~~"Sulfate of potash magnesia" means a fertilizer containing not less than twenty-five (25) percent soluble potash (K₂O) nor less than twenty-five (25) percent sulfate of magnesia and not more than two and one-half (2.5) percent chlorine.~~

(92) ~~"Sulfur coated urea" means a coated slow release fertilizer consisting of urea particles coated with sulfur. The product is usually further coated with a sealant (two (2) percent to three (3) percent of total weight) and a conditioner (two (2) percent to three (3) percent of total weight). It typically contains about thirty (30) percent to forty (40) percent nitrogen and about ten (10) percent to thirty (30) percent sulfur.~~

(93) ~~"Superphosphate" means a fertilizer that is obtained when phosphate rock is treated with either sulfuric acid, phosphoric acid, or a mixture of those acids. The guaranteed percentage of available phosphate shall be stated as a part of the name.~~

(94) ~~"Superphosphoric acid" means the acid form of polyphosphates, consisting of a mixture of orthophosphoric and polyphosphoric acids. Ionic species distribution varies with concentration, typically sixty-eight (68) to eighty-three (83) percent P₂O₅.~~

(95) ~~"Suspension fertilizer" means a fluid fertilizer containing dissolved and undissolved plant nutrients where the undissolved plant nutrients are suspended with the aid of a nonfertilizer suspending agent or by the inherent properties of the undissolved materials. Mechanical agitation may be necessary in some cases to facilitate uniform suspension of the undissolved plant nutrients.~~

(96) ~~"Synthetic" means any substance generated from another material or materials by means of a chemical reaction.~~

(97) ~~"Tankage (without qualification)" means a fertilizer made from the rendered, dried, and ground by-product, largely meat and bone, from slaughtered animals or those that have otherwise died.~~

(98) ~~"Triazone" means a fertilizer that is a water soluble compound of formula C₃H₂N₃O which contains at least forty-one (41) percent total nitrogen. (CAS No. 709814-6, 1,3,5 triazin-2-one, tetrahydro-s-triazone)~~

(99) ~~"Unit" means twenty (20) pounds of plant food or one (1) percent of a ton.~~

(100) ~~"Unmanipulated" means materials not subjected to manipulation.~~

(101) ~~"Urea" means a fertilizer that is the commercial synthetic acid amide of carbonic acid and it shall contain not less than forty-five (45) percent nitrogen.~~

(102) ~~"Urea-formaldehyde products (sparingly soluble)" means fertilizers that are reaction products of urea and formaldehyde which:~~

(a) ~~Contain less than thirty-five (35) percent total nitrogen, largely in water insoluble but slowly available form;~~

(b) ~~Have not less than sixty (60) percent of the total nitrogen in water insoluble form; and~~

(c) ~~Shall have activity indexes of the water insoluble nitrogen that are either:~~

1. ~~Not less than forty (40) percent by the AOAC International Method 955.05 (nitrogen activity index for urea-formaldehyde products); or~~

2. ~~Not less than fifty (50) percent by AOAC International Method 920.07 (alkaline permanganate) or eighty (80) percent by AOAC International Method 920.06 (neutral permanganate). They shall have the percentage of total nitrogen as part of the product name; for example: Twenty (20) percent N Urea-Formaldehyde.~~

(103) ~~"Urea-formaldehyde products (water soluble)" means fertilizers that are reaction products of urea and formaldehyde which:~~

(a) ~~Contain at least thirty (30) percent nitrogen, largely in water soluble form;~~

(b) ~~Have some slowly available nitrogen products present;~~

(c) ~~Form stable aqueous solutions; and~~

(d) ~~Contain a maximum of fifty-five (55) percent free urea, with the remainder of the urea being chemically combined as methylolureas, methylolurea ethers, and/or methylenediurea (MDU) and dimethylenetriurea (DMTU).~~

(104) ~~"Ureaform materials (sparingly soluble)" means fertilizers that are reaction products of urea and formaldehyde which:~~

(a) ~~Contain at least thirty-five (35) percent nitrogen, largely in water insoluble but slowly available form;~~

(b) ~~Have at least sixty (60) percent of the total nitrogen content in water insoluble form; and~~

(c) ~~Have a water insoluble nitrogen activity index of not less than forty (40) percent when determined by AOAC International Method 955.05.~~

(105) ~~"Urea-triazone solution" means a fertilizer that is a stable solution resulting from controlled reaction in aqueous medium of urea, formaldehyde, and ammonia which:~~

(a) ~~Contains at least twenty-five (25) percent total nitrogen; and~~

(b) ~~Shall contain no more than forty (40) percent nor less than five (5) percent of the total nitrogen from unreacted urea and not less than forty (40) percent of the total nitrogen from triazone. All other nitrogen shall be derived from water soluble, dissolved reaction products of the above reactants. It is a source of slowly available nitrogen.~~

(106) ~~"Vegetable manure" means plant material that has been composted.]~~

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed

Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: Defines approved fertilizer materials.

(b) The necessity of this administrative regulation: Defines the source materials for fertilizer labeling purposes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 250.421 the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines official fertilizer materials.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the usage of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO) to define fertilizer materials to the 2020 Publication.

(b) The necessity of the amendment to this administrative regulation: We are changing to the AAPFCO Official Publication instead of defining each fertilizer material.

(c) How the amendment conforms to the content of the authorizing statutes: Updates terms and definitions used to regulate the fertilizer industry.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it brings in new terms and definitions that have been developed since 1994.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register fertilizer labels in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will broaden the definitions and terms available to the industry.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.421

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 4:130. Investigational allowances.

RELATES TO: KRS 250.366(19), 250.391(3), 250.396(1), (2), 250.401

STATUTORY AUTHORITY: KRS 250.421

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.421 requires the director to promulgate administrative regulations necessary to implement KRS 250.361 through 250.461. This administrative regulation establishes ~~To prescribe~~ scientifically sound and fair investigational allowances as a basis for declaring a fertilizer sample deficient in its guaranteed analyses and to detail the calculation of the index value of a fertilizer.

Section 1. A fertilizer shall be deemed deficient if the analysis of an official sample for any primary nutrient is below the guarantee by an amount exceeding the values in the following schedule.

Guaranteed percent	Total Nitrogen (N) percent*	Available Phosphate (P ₂ O ₅) percent*	Soluble Potash (K ₂ O) percent*
05 or less	0.37	0.65	0.39
06	0.47	0.71	0.47
07	0.59	0.77	0.56
08	0.72	0.82	0.63
09	0.81	0.86	0.70
10	0.89	0.89	0.76
12	1.03	0.95	0.87
14	1.18	1.02	0.96
16	1.29	1.12	1.05
18	1.43	1.19	1.12
20	1.57	1.32	1.18
22	1.62	1.39	1.22
24	1.65	1.46	1.26
26	1.66	1.53	1.29

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28	1.58	1.59	1.33
30	1.28	1.67	1.36
32 or more	1.28	1.67	1.36

For guarantees not listed, calculate the appropriate value by interpolation.

*For these investigational allowances to be applicable, the procedures recommended by AOAC International for obtaining samples, preparation and analysis shall be used. These are described in the 15th Edition (1990) of the Official Methods of Analysis of the AOAC International. In evaluating replicate data, Table 19, page 935, Journal of the Association of Official Analytical Chemists, Volume 49, No. 5, October, 1966, shall be followed. [The above materials are hereby incorporated by reference and are available for inspection and copying at 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky, during regular business hours of 8 a.m. to 5 p.m., Monday through Friday.]

Section 2. A fertilizer shall be deemed deficient in the overall index value if the overall index value is less than ninety-seven (97) percent.

(1) The overall index value is calculated by comparing the value guaranteed with the value found. Unit values of the nutrients used shall be those referred to in KRS 250.401.

(2) Overall index value. Example of calculation for a 10-10-10 grade found to contain ten and one-tenth (10.1) percent Total Nitrogen (N), ten and two-tenths (10.2) percent Available Phosphate (P₂O₅) and ten and one-tenth (10.1) percent Soluble Potash (K₂O). Nutrient unit values are assumed to be three (3) dollars per unit N, two (2) dollars per unit (P₂O₅), and one (1) dollar per unit K₂O.

10.0 units N	x3=	10.0
10.0 units P ₂ O ₅	x2=	20.0
10.0 units K ₂ O	x1=	10.0
Commercial Value Guaranteed =		60.0
10.0 units of N	x3=	30.3
10.2 units of P ₂ O ₅	x2=	20.4
10.1 units K ₂ O	x1=	10.1
Commercial Value Found =		60.8
Overall Index Value = 100(60.8/60.00) = 101.3%		

Section 3. Secondary and minor elements shall be deemed deficient if the analysis of an official sample for any of these elements is below the guarantee by an amount exceeding the values in the following schedule:

Element	Investigational Allowance
Calcium)	0.2 unit + 5% of guarantee
Magnesium)	0.2 unit + 5% of guarantee
Sulfur)	0.2 unit + 5% of guarantee
Boron)	0.003 unit + 15% of guarantee
Molybdenum)	0.0001 unit + 30% of guarantee
Chlorine)	0.005 unit + 10% of guarantee
Copper)	0.005 unit + 10% of guarantee
Iron)	0.005 unit + 10% of guarantee
Manganese)	0.005 unit + 10% of guarantee
Sodium)	0.005 unit + 10% of guarantee
Zinc)	0.005 unit + 10% of guarantee
The maximum allowance when calculated in accordance to the above shall be one (1) unit (1 percent).	

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) 15th Edition (1990) of the Official Methods of Analysis of the AOAC International.

(b) Table 19, page 935, Journal of the Association of Official Analytical Chemists, Volume 49, No. 5, October, 1966

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides the basis of investigational allowances for nutrient determination.

(b) The necessity of this administrative regulation: Provides standards for the regulated community for laboratory analysis determinations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 250.421 the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets the standards needed for sample analysis.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the necessity, function and conformity statement. It also formats the items which are incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: We are updating the fertilizer regulations to current format.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the necessity, function and conformity statement to the most current system.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it updates to the new criteria.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register and sell fertilizer products in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have known investigational allowance standards.

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

- (a) Initially: No cost
- (b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.421.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

- Revenues (+/-):
- Expenditures (+/-):
- Other Explanation: No fiscal impact

**AGRICULTURAL EXPERIMENT STATION
(Amendment)**

12 KAR 4:140. Monetary penalties.

RELATES TO: KRS 250.396(1), (2)
STATUTORY AUTHORITY: KRS 250.421

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.421 requires the director to promulgate administrative regulations necessary to implement KRS 250.361 through 250.461. This administrative regulation establishes [To prescribe] the specific method of calculating the monetary penalties required by the fertilizer law.

Section 1. Penalties for deficiencies in Total Nitrogen (N), Available Phosphate (P₂O₅), soluble potash (K₂O), and index value shall be calculated from the following schedule:

Number of Investigational Allowances Below Guarantee	Penalty Schedule
<2	Equal to the monetary value of the deficiency
>2 <3	Two (2) times the monetary value of the deficiency
>3	Three (3) times the monetary value of the deficiency

Section 2. Minimum standards and overages of primary nutrients are allowed to reduce penalties calculated in Section 1 of this administrative regulation for fertilizer with index values equal to or greater than ninety-seven (97) percent on the basis of the following schedule:

Number of Investigational Allowances Below Guarantee	Penalty Adjustments
No more than one (1) deficiency that is less than or equal to two (2) investigational allowances	Penalty adjusted to zero
No more than one (1) deficiency that is greater than two (2) but less than three (3) investigational allowances	Value of overages may adjust up to 100% of the value of the deficiencies
Two (2) deficiencies that are less than three (3) investigational allowances; or, no more than one (1) deficiency that is equal to or greater than three (3) but less than four (4) investigational allowances	Value of overages may adjust up to 75% of the value of the deficiencies

Section 3. When a fertilizer is subject to a penalty from both a primary nutrient deficiency and an index value deficiency, only the larger penalty shall apply; however, in no case shall the penalty exceed the total value of the fertilizer.

Section 4. Penalties for deficiencies in secondary and minor elements and for excess chlorine in tobacco fertilizer shall be calculated from the following schedule.

(1) Deficiencies.

Number of Investigational Allowances Below Guarantee	Penalty Schedule
<2	Equal to the monetary value of the deficiency
>2	Two (2) times the monetary value of the deficiency

(2) Excess chlorine in tobacco fertilizers. The investigational allowance for maximum chlorine shall be five-tenths (0.5) percent.

Number of Investigational Allowances Above Maximum Chlorine Guarantee	Penalty Schedule
<2	Equal to the difference in the soluble potash (for tobacco) unit value and the nontobacco soluble potash unit value
>2	Two (2) times the difference in the soluble potash (for tobacco) unit value and the nontobacco soluble potash unit value

Section 5. Any penalty assessed under Section 1 of this administrative regulation shall be added to any penalty assessed under Section 4 of this administrative regulation and the total shall be paid by the registrant to the consumer of the lot of fertilizer represented by the sample within three (3) months after the date of notice from the director, receipts taken therefore and promptly forwarded to the director. If said consumer cannot be found, the amount of the penalty payments shall be paid to the Kentucky Agricultural Experiment Station within three (3) months after the date of the notice from the director to the registrant and set aside for purchase of equipment for the sampling, handling, analyzing and reporting of results of analyses of official samples and for the

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education of the Kentucky fertilizer industry on the newest methods in manufacturing blended fertilizers. If the lot of fertilizer is on hand at a retail location the penalty payments assessed under this section shall be used to reduce the retail price of the fertilizer if it is to be relabeled and sold.

Section 6. In no case shall the total of the penalties assessed under this administrative regulation exceed the retail value of the fertilizer.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides the basis of monetary penalties associated with samples which did not meet investigational allowances.

(b) The necessity of this administrative regulation: Provides accountability to the regulated industry and penalty payments to producers for analysis of fertilizer samples.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 250.421 the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the basis of monetary penalties associated with the analysis of fertilizer samples. When possible penalty payments are provided back to the purchaser.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the necessity, function and conformity statement.

(b) The necessity of the amendment to this administrative regulation: We are updating the fertilizer regulations to current format.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the necessity, function and conformity statement to the most current system.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it updates to the new criteria.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register and sell fertilizer

products in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): When providing fertilizer for sale in Kentucky which meet the investigational allowances, the regulated community provides well blended fertilizer products for farm producers in Kentucky.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.421.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION
(Amendment)

12 KAR 4:170. Maximum chlorine guarantees for tobacco fertilizers.

RELATES TO: KRS 250.366(7), 250.411(1)
STATUTORY AUTHORITY: KRS 250.421

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.421 requires the director of the Kentucky Agricultural Experiment Station to enforce the provisions of KRS 250.371 to 250.451 and to promulgate and enforce administrative regulations necessary to implement KRS 250.371 to 250.451. This administrative regulation establishes the specific format and conditions for maximum chlorine guarantee for tobacco fertilizers, which is necessary for production of quality tobacco.

~~Section 1. [(1) Until January 1, 2001, bagged tobacco fertilizer sold for or represented for use on field crop tobacco, shall, in addition to the other guarantees specified by 12 KAR Chapter 4, state a maximum chlorine guarantee not to exceed two and five-tenths (2.5) percent in the following format:~~

~~Chlorine (Cl), Maximum 2.5 percent~~

~~(2) The maximum chlorine guarantee shall be prominently and conspicuously placed below the Guaranteed Analysis required by 12 KAR 4:090.~~

~~(3) On or after January 1, 2001, the provisions of Section 2 of this administrative regulation shall apply to bagged tobacco fertilizer.~~

~~Section 2.] (1) [Except as provided by Section 1 of this administrative regulation, all] All fertilizers sold for or represented for use on field crop tobacco, shall, in addition to the other guarantees specified by 12 KAR Chapter 4, state a maximum chlorine guarantee not to exceed fifty (50) pounds chlorine per acre (equivalent to 100 pounds of muriate of potash per acre) in the following format:~~

~~Chlorine (Cl), Maximum 50 lb./acre~~

~~(2) The maximum chlorine guarantee shall be prominently and conspicuously displayed on the label as required by KRS 250.376.~~

~~(3) The invoice, shipping ticket, or bag label shall:~~

~~(a) State the rate of application expressed as pounds or tons of the blended fertilizer per acre;~~

~~(b) State clearly that the fertilizer is for use on tobacco; and~~

~~(c) Give directions for use to include a maximum application rate so that no more than fifty (50) pounds of chlorine is applied per acre.~~

~~(4) The provisions of this administrative regulation shall not apply to fertilizers for use on plant beds.~~

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory

Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides the labeling guidelines of chlorine for tobacco fertilizers.

(b) The necessity of this administrative regulation: Excessive chlorine in tobacco can cause quality issues, this provides a maximum amount of chlorine in tobacco fertilizers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 250.421 the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides that 100 pounds of muriate of potash, which is a cheaper source of potash but contains chlorine, can be used in tobacco fertilizers to keep the cost down.

(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 removes old language.

(b) The necessity of the amendment to this administrative regulation: We are updating the fertilizer regulations to current format.

(c) How the amendment conforms to the content of the authorizing statutes: Updates the regulation.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it updates to the new criteria.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register and sell tobacco fertilizer products in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will not be in violation of the regulation and provide tobacco fertilizer with low amounts of chlorine.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.421.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

BOARDS AND COMMISSIONS

Board of Pharmacy (Amendment)

201 KAR 2:105 Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual [Licensing and drug distribution requirements for] wholesale distributors.

RELATES TO: KRS 315.010, 315.350, 315.402, 315.406

STATUTORY AUTHORITY: KRS 315.010, 315.191(1)(a), 315.350, 315.402, 315.406

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.350, 315.402 and 315.406 authorizes the board to promulgate administrative regulations to regulate wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors of prescription drugs and related devices. This administrative regulation establishes the requirements for the regulation of wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

Section 1. Definitions[Definition].

(1) "Distribution" or "distribute" has the same meaning given in KRS 315.400(5).

(2) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(3) "Medical gas wholesaler" has the same meaning given in KRS 315.400(13).

(4) "Suspect product" means a product for which there is reason to believe that such product:

(a) Is potentially counterfeit, diverted, or stolen;

(b) Is potentially intentionally adulterated such that the product would result in serious adverse health consequences or death to humans or animals;

(c) Is potentially the subject of a fraudulent transaction; or

(d) Appears otherwise unfit for distribution such that the product would result in serious adverse health consequences or death to humans or animals.

(5) "Wholesale distribution" has the same meaning given in

KRS 315.400(20).

(6) "Wholesale distributor" has the same meaning given in KRS 315.400(21).

(7) "Wholesaler" has the same meaning given in KRS 315.010(28) and includes medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

(8) "Virtual wholesale distributor" has the same meaning given in KRS 315.400(21).

Section 2. Requirements.

(1) A wholesaler[wholesale distributor] engaged in wholesale distribution in the Commonwealth shall apply for a license from the Board[board] of Pharmacy in accordance with KRS 315.350, 315.402, 315.406, and this administrative regulation.

(2) A surety bond of not less than \$25,000 or other equivalent means of security acceptable to the Board of Pharmacy or a third party recognized by the Board of Pharmacy such as insurance, an irrevocable letter of credit, or funds deposited in a trust account or financial institution, to secure payment of any administrative penalties imposed by the Board of Pharmacy and any fees or costs incurred by the Board of Pharmacy regarding that licensee when those penalties, fees, or costs are authorized under state law and the licensee fails to pay thirty (30) days after the penalty, fee, or costs becomes final. A separate surety bond or other equivalent means of security is not required for each company's separate locations or for affiliated companies/groups when such separate locations or affiliated companies/groups are required to apply for or renew their wholesaler license with the Board of Pharmacy. The Board of Pharmacy may make a claim against such bond or other equivalent means of security until one year after wholesaler's license closes, lapses or expires, or until sixty (60) days after any administrative or legal proceeding before or on behalf of the Board of Pharmacy that involves the wholesaler is concluded, including any appeal, whichever occurs later. The Board of Pharmacy may waive the bond requirement, if the wholesaler:

(a) has previously obtained a comparable surety bond or other equivalent means of security for the purpose of licensure in another state, where the wholesaler possesses a valid license in good standing;

(b) is a publicly held company;

(c) is a medical gas wholesaler; or

(d) has a license for the sole purpose of distribution within a health care entity under common ownership.

(3)[(2)] A separate license shall be required for each wholesaler's [wholesale distributor's] facility that engages in wholesale distribution [distributes] within the Commonwealth regardless of whether joint ownership or control exists.

(4)[(3)] An agent or employee of a licensee shall not be required to obtain a license under this section when the agent or employee is acting in the usual course of business or employment.

(5)[(4)] A license shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate operational, maintenance, and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official United States Pharmacopoeia (USP) compendium requirements. Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs and related devices;

(b) Separation[Physical separation] and quarantine of deteriorated, damaged, outdated, misbranded, adulterated or otherwise recalled prescription drugs and related devices [merchandise] until they are destroyed or returned;

(c) Providing accurate and precise records of all prescription drugs and related devices sold, purchased, traded, delivered, handled, stored, or received and any other information pertinent to the distribution or disposition[goods shipped or received including source or recipient, date, quantity, itemized description, and any other information pertinent to the transaction]; and

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(d) Providing proof of registration ~~[with the state controlled substance authority, and]~~ with the U.S. Drug Enforcement Administration (DEA) and shall comply with all DEA regulations, if applicable.

(6) Wholesale distributors and virtual wholesale distributors shall comply with all requirements outlined in the Drug Supply Chain Security Act (DSCSA).

(7) Wholesalers shall establish a system to:

(a) Quarantine and investigate suspect product to determine if it is illegitimate; and

(b) Notify U.S. Food and Drug Administration (FDA), if applicable, the Board of Pharmacy and recipient(s) of illegitimate product, if illegitimate product is found.

(8) A virtual wholesale distributor shall be exempt from the following, Section 2(5)(a) and (b) and Section 5(1)(a) and (b) and (2)(a) and (b).

Section 3. Qualifications for License. (1) ~~[The minimum qualifications shall include:~~

~~(a)]~~ The ~~[Kentucky]~~ Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs and related devices within the Commonwealth:

~~(a)[1.]~~ Any convictions of the applicant under any federal, state, or local laws relating to drugs to include drug samples and ~~[wholesale or retail drug distribution of]~~ controlled substances;

~~(b)[2.]~~ Any felony convictions of the applicant under federal, state, or local laws;

~~(c)[3.]~~ The applicant's past experience in the ~~[wholesale]~~ distribution of prescription drugs and related devices, including drug samples and controlled substances;

~~(d)[4.]~~ The furnishing by the applicant of false or fraudulent material in any application made in connection with the distribution of prescription drugs and related devices ~~[wholesale distribution];~~

~~(e)[5.]~~ Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant for ~~[wholesale]~~ distribution of any prescription drugs and related devices, including drug samples and controlled substances;

~~(f)[6.]~~ Compliance with the requirements under any previously granted license or permit, if any; and

~~(g)[7.]~~ Compliance with requirements to maintain or make available to the ~~[Kentucky]~~ Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this regulation~~[section].~~

~~(2)[(b)]~~ The ~~[Kentucky]~~ Board of Pharmacy shall have the right to deny a license to an applicant if it determines that the granting of that license would not be in the public interest based on health and safety considerations.

~~(3)[(2)]~~ A license shall not be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal, ~~[and]~~ state, and local laws and regulations relating to drugs; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in the ~~[his]~~ application.

~~(4) [(3)]~~ A license issued pursuant to this administrative regulation ~~[may be suspended or revoked for failure]~~ failing to comply with the provisions of KRS 315.350, 315.400, 315.402, 315.404, 315.406, 315.408, 315.410, 315.412, or this administrative regulation may result in action under KRS 315.121.

Section 4. Application, Fees, Renewals.

(1) An application for a license shall be submitted to the Board of Pharmacy on "Application for a License to Operate as a Wholesaler ~~[Wholesale Distributor (KBP-W 9-08)]"~~.

(2) An application shall be accompanied by the annual fee set forth in 201 KAR 2:050.

(3) An application shall include:

(a) The name, full business address, and telephone number of the licensee;

(b) All trade or business names~~[name]~~ used by the licensee;

(c) Addresses, telephone numbers, and the names of contract persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs and related devices;

(d) The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship);

(e) The name(s) of the owner and operator of the licensee, including;

1. If a person, the name and Social Security number of the person;

2. If a partnership, the name and Social Security number of each partner, and the name of the partnership;

3. If a corporation, the name, Social Security number and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

4. If a sole proprietorship, the full name and Social Security number of the sole proprietor and the name of the business entity; ~~[and]~~

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs and related devices; ~~and[-]~~

(g) Proof of surety bond or equivalent.

(4) All licenses shall:

(a) Expire on September 30 following date of issuance; and

(b) Be renewable annually thereafter upon renewal application accompanied by the renewal fee set forth in 201 KAR 2:050 and shall be nontransferable.

Section 5. Standards.

(1) Facilities.

(a) All facilities~~[buildings]~~ in which prescription~~[legend]~~ drugs and related devices are held for wholesale distribution, ~~[repackaged,]~~ stored, ~~[held,]~~ sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.

(b) All facilities~~[Buildings]~~ shall meet all applicable federal, state, and local standards. The facility shall ~~[have a]~~ quarantine ~~[area for storage of]~~ prescription drugs and related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated, or that are in immediate or sealed secondary containers that have been opened.

(c) A facility shall not be located in a residence.

(d) A facility shall be located apart and separate from a pharmacy permitted by the Board of Pharmacy, with the exception of a medical gas wholesaler.

(2) Security.

(a) A wholesaler~~[wholesale distributor]~~ shall be equipped with an alarm system to detect entry after hours.

(b) A wholesaler~~[wholesale distributor]~~ shall ensure that access from outside their premises is well controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where ~~[legend]~~ prescription drugs and related devices are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A licensee shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of prescription drugs and related devices.

(3) Recordkeeping.

(a) Inventories and other records ~~[of transactions]~~ regarding the receipt and distribution or ~~[and]~~ disposition of prescription~~[legend]~~ drugs and related devices shall be maintained and readily available for inspection or photocopying by the Board of Pharmacy and authorized law enforcement officials for a period of six (6) years~~[two (2) years following disposition of the drugs]~~. These records shall include:]

1. ~~The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location~~

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from which the drugs were shipped;

~~2. The identity and quantity of the drugs received and distributed or disposed of; and~~

~~3. The dates of receipt and distribution or other distribution of the drugs.]~~

1. The proprietary and established name of the prescription drug and/or related device;

2. The dosage, if applicable;

3. The size of the container, if applicable;

4. The number of containers;

5. The lot number or control number of the prescription drug and/or related device, if applicable;

6. The business name and address of all parties involved in each receipt and distribution or disposition of the prescription drug and/or related device, starting with the manufacturer; and

7. the date of each receipt and distribution or disposition of the prescription drug and/or related device.

(b) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by the Board of Pharmacy or an authorized official of a federal, state, or local law enforcement agency.

(c) Wholesalers shall maintain an ongoing list of verified persons or businesses with whom they do business.

(d) A wholesaler may sell or distribute prescription drugs and related devices only to the following, except as provided in KRS 315.0351(2) and KRS 315.404:

1. A currently licensed wholesaler;

2. A currently licensed third party logistics provider;

3. A currently permitted pharmacy;

4. A currently licensed outsourcing facility;

5. A currently licensed practitioner;

6. A currently permitted repackager;

7. A currently licensed hospital, but only for use by or in that hospital; or

8. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.

(e) A wholesaler may acquire prescription drugs and related devices only from the following, except as provided in KRS 315.404:

1. A currently permitted manufacturer;

2. A currently permitted repackager;

3. A currently licensed wholesaler; or

4. A currently licensed third-party logistics provider.

(f) Wholesalers shall maintain a system for the mandatory reporting of any theft, suspected theft, diversion, or other significant loss of any prescription drug and related device to the Board of Pharmacy, and where applicable, the FDA and DEA.

(4) Written policies and procedures.

(a) A wholesaler[Wholesaler–Distributor–distributors] shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, [and] distribution, and disposition of prescription drugs and related devices[, including policies and procedures for identifying, recording, and reporting losses or thefts and to assure that the wholesale distributor prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.]

(b) There shall be written policies and procedures for identifying, recording, and reporting losses or thefts.

(c) There shall be written policies and procedures to assure that the wholesaler prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(d)[(b)] There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(e)[(e)] There shall be written policies and procedures to

assure that any outdated stock or any stock with an expiration date that, in the wholesaler's[~~wholesale distributor's~~] view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return to the manufacturer or otherwise destroyed, and this shall be documented.

(f)[(d)] There shall be written policies and procedures by which the wholesaler[wholesale distributor] exercises control over the shipping and receiving of all stock within the operation.

(g) There shall be written policies and procedures for investigating suspect product and reporting illegitimate product to the Board of Pharmacy and the FDA pursuant to the DSCSA, where applicable.

(5) Returned, damaged, and outdated prescription drugs and related devices. A wholesaler [wholesale distributor] shall maintain and follow a written policy and procedure to assure the proper handling and disposal of returned goods. If conditions under which a prescription drug or related device has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug or related device shall be destroyed, or returned, unless examination, testing, or other investigation proves that the drug or related device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a prescription drug or related device has been returned cast doubt on the drug's or related device's safety, identity, strength, quality, or purity, the wholesaler[wholesale distributor] shall consider, among other things, the conditions under which the drug or related device has been held, stored, or shipped before or during its return and the condition of the drug or related device and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A wholesaler[wholesale distributor] shall establish, maintain, and adhere to a[follow] written policy and procedure for handling recalls and withdrawals of [products] prescription drugs and related devices. The policy and procedure shall cover all recalls and withdrawals of drugs[drug products] and related devices due to:

(a) Any voluntary action on the part of the manufacturer;

(b) The direction of the FDA[Food and Drug Administration], or any other federal, state, or local government agency; and

(c) Replacement of existing [merchandise with an improved product or new package design] prescription drug and related device[.]

(7) Procedures.

(a) A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock.

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the expiration date is taken into consideration when distributing inventory[the oldest inventory is distributed first].

(c) A wholesaler[wholesale distributor] shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug and related device[product] salvaging or reprocessing.[

Section 6. Pedigree.

(1) Effective July 1, 2009 and in accordance with KRS 315.406, each person or entity engaged in the wholesale distribution of prescription drugs that leave or that have ever left the normal distribution channel shall, prior to the distribution of the prescription drug, provide a pedigree to the person receiving the prescription drug.

(2) The pedigree shall include the following information concerning the prescription drug:

(a) The proprietary and established name of the prescription drug;

(b) The dosage;

(c) The size of the container;

(d) The number of containers;

(e) The lot number or control number of the prescription drug;

(f) The business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer; and

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(g) The date of each previous transaction.

(3) ~~Pedigree records shall be maintained and readily be available for inspections or photocopying by authorized law enforcement officials for a period of two (2) years.]~~

Section 6. ~~[7.]~~ Violations.

(1) A ~~wholesaler~~ ~~wholesale distributor~~ shall not distribute ~~prescription~~ ~~legend~~ drugs and related devices directly to a consumer or a patient ~~except as provided in KRS 315.0351(2). [or operate in a manner that endangers the public health.]~~

(2) A wholesaler shall not operate in a manner that endangers the public health.

(3) ~~(2)~~ Violations [violation] of any of these provisions shall be grounds for ~~action under KRS 315.121 [the suspension or revocation of the license].~~

Section 7. ~~[8.]~~ Incorporation by Reference.

(1) "Application for a License to Operate as a Wholesaler", May 2020, [Wholesale Distributor (KBP-W 9-08)] is incorporated by reference.

(2) "Renewal Application to Operate as a Wholesaler", May 2020, is incorporated by reference.

(3) 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 40601-8024, [Spindletop Administration Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40514.] Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: June 5, 2020

FILED WITH LRC: June 5, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2020 at 9:00 a.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. 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: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the regulation of wholesalers, medical gas wholesalers, wholesale distributors and virtual wholesale distributors.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities that provide pharmacy services. This administrative regulation establishes the requirements for the regulation of wholesalers, medical gas wholesalers, wholesale distributors and virtual wholesale distributors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for the regulation of wholesalers,

medical gas wholesalers, wholesale distributors and virtual wholesale distributors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Retitle this regulation and cleanup language to be consistent with Federal Regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: How the amendment will change this existing administrative regulation: Retitle this regulation; Retitle this regulation and cleanup language to be consistent with Federal Regulations.

(a) The necessity of the amendment to this administrative regulation: The criteria needed to be updated.

(b) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(c) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by retitling this regulation and cleanup language to be consistent with Federal Regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally by this regulation amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify previous statutory language.

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

(a) Initially: There will be no costs incurred.

(b) On a continuing basis: There will be no costs incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the 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: The fee for wholesale distributor permit will be increased by \$25.00.

(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 this amendment increases the fee for wholesale distributors from \$100.00 to \$125.00.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists and sponsors that desire approval for continuing education credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be the only entity impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is estimated this administrative regulation will generate an annual increase in revenue in the amount of \$106,800.00 for the Board in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

It is estimated this administrative regulation will generate an annual increase in revenue in the amount of \$106,800.00 for the Board in the first year.

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): regulation will provide an annual \$106,800 increase in revenue

Expenditures (+/-): 0

BOARDS AND COMMISSIONS

Board of Pharmacy (Amendment)

201 KAR 2:106. Licensed or permitted facility closures [Pharmacy, manufacturer, or distributor closures].

RELATES TO: KRS 315.035, 315.0351, 315.036, 315.340, 315.342, 315.350, 315.402, 315.4102

STATUTORY AUTHORITY: KRS [315.036], 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) requires the board to promulgate administrative regulations relating to subject matters governed by KRS Chapter 315. This administrative regulation establishes requirements relating to closure of business by licensees and permit holders.

Section 1. Definitions. As used in this administrative regulation:

(1) "Permanent voluntary closure" means a licensee or permit holder:

(a) Ceases to do business and permanently closes; and

(b) Does not file application for a license [pharmacy license] or permit for the same location.];

(2) "Voluntary closure" means a closing or abandonment of premises resulting from:

(a) Chronic mental or physical deterioration; or

(b) A deviation from the business hours listed on the current permit application or amendments filed thereto; or

(c) Cessation of the practice of pharmacy at the licensed location for a reason other than permanent or involuntary closure.];

(2) [(3)] "Involuntary closure" means an interruption of formal business activity resulting from:

(a) Acute illness or incapacitation;

(b) Death;

(c) Fire, flood, or other natural disaster;

(d) Bankruptcy proceedings; or

(e) Court, government, or Board of Pharmacy action.

(3) "Temporary closure" means a licensee or permit holder whose hours of operation have deviated over a period of five (5) consecutive working days from those of record at the Board of Pharmacy office for a reason other than permanent voluntary

closure or involuntary closure.

(4) "Non-use" means a failure to engage in formal business activity within one (1) year of initial licensing or permitting or renewal of license or permit.

Section 2. Procedures for Closure Applicable to All Licensees and Permit Holders. (1) Permanent voluntary closure.]

(a) A licensee shall conspicuously place a sign notifying the public thirty (30) days in advance of the:

1. Termination date of business; and

2. Name and address of the licensee to which prescription files or other pertinent records will be transferred.

(b) Except when prevented by the exercise of another party's legal rights:

1. The sign shall remain in place for a period of thirty (30) days after the closure; and

2. All efforts shall be undertaken to assure a smooth transition of uninterrupted service to those affected by the closure.];

(a) [(c)] A licensee or permit holder shall inform the Board of Pharmacy, and if applicable, the Drug Enforcement Administration (DEA), and the Cabinet for Health and Family Services [Human Resources] by written notice fifteen (15) days prior to the anticipated [closing] closure and include the following information:

1. Date of business termination; and

2. Name, address, and DEA number of registrant to whom the prescription drugs and related devices including [or] controlled substances [drugs] are to be transferred; and

3. Name, address, and DEA number of registrant to whom the records including inventories, acquisition records, purchase records, and disposition records are to be transferred.

(b) [(d)] In the absence of directives to the contrary from the DEA [Drug Enforcement Administration], the Board of Pharmacy, or the Cabinet for Health and Family Services [Human Resources], the transfer shall be effected on the assigned date.

(c) [(e)] The transferor and the transferee shall each maintain copies of the following records [documents] relating to transferred controlled substances for at least two (2) years following closure:

1. U.S. Official Order Forms, DEA-222 Schedule II; and

2. Schedules III, IV, and V Invoices; and [for a period of at least two (2) years]

3. Controlled substances inventory.

(d) The transferee shall maintain copies of the following records relating to prescription drugs and related devices for at least two (2) years following closure:

1. Inventories;

2. Acquisition records;

3. Purchase records; and

4. Disposition records.

(e) The records in subsection (d) may be stored on computer or other electronic means and must be readily retrievable.

(f) Upon termination, a licensee or permit holder shall:

1. Remove all signs pertinent to pharmacy or drugs from the building and premises; and

2. Return the voided permits, the DEA [Drug Enforcement Administration] registration, and unused Schedule II Order Forms to their respective office of issue.];

(g) The posting of the sign required by paragraph (a) of this subsection shall not be required if:

1. An application for a pharmacy license for the same location is filed; or

2. During a sale of a pharmacy, prescription records are transferred to another permitted pharmacy that is within five (5) miles of the location of the pharmacy that is sold and owned by the purchasing entity. (2) Voluntary closure.

(a) A pharmacy or distributor licensed by the Kentucky Board of Pharmacy whose hours of operation have deviated over a period of five (5) consecutive working days from those of record at the Board of Pharmacy office shall immediately notify the board, verbally and in writing of the reason for the deviation and the anticipated period of continuance.

(b) Upon receipt of the notice, the Board of Pharmacy, with full cooperation of the licensee, shall make arrangements it deems necessary to provide adequate and continued security and control of all drugs, chemicals, poisons, and devices owned or

controlled by the licensee.

(c) If normal operation cannot resume within sixty (60) days, or if satisfactory agreements cannot be reached between the Board of Pharmacy, the licensee, or his designated representative, the:

1. Permit shall be revoked; and
2. Board of Pharmacy shall notify the Cabinet for Human Resources to assume control and responsibility of any drug, chemical, poison, or device deemed necessary in any manner deemed appropriate.

(d) If the Board of Pharmacy or the Cabinet for Human Resources or its agents liquidate or arrange for the liquidation of items specified in paragraphs (b) and (c) of this subsection, the board or the Cabinet for Human Resources may retain a portion of the proceeds realized from the liquidation equal to the expenses incurred.]

(2)[(3)] Involuntary closure.

(a) Within five (5) days of involuntary closure, a licensee or permit holder, or person authorized to act on [his] behalf of the licensee or permit holder, shall:

1. Notify the Board[board] of Pharmacy in writing; and
2. Guarantee the security [safety] and control of the licensed or permitted premises in a manner that will allow continued storage of prescription drugs and related devices, including controlled substances, and records, including patient records, if applicable, [consigned to the board permittees] for sixty (60) days after the effective date of the involuntary closure.

(b) Within sixty (60) days after the effective date of the involuntary closure, a licensee or permit holder shall make [effect] arrangements for the lawful transfer [sale] or other disposition of prescription drugs and related devices, including controlled substances, and records [requiring board licensure].

(c) The Board[board] of Pharmacy may assume control and responsibility of prescription drugs and related devices, including controlled substances, and records, including patient records, if applicable, it deems necessary for disposition, if after the expiration of the sixty (60) day period following the effective date of involuntary closure:

1. A lawful transfer [sale] or other disposition has not been made [effected]; or
2. An agreement between the Board[board] of Pharmacy[,] and the licensee or permit holder or person authorized to act on behalf of the licensee or permit holder, has not been reached.

(3) Permanent voluntary closure of licensees and permit holders with patient records.

(a) A licensee or permit holder shall conspicuously place a sign notifying the public thirty (30) days in advance of the:

1. Termination date of business; and
2. Name and address of the licensee or permit holder to which prescription files or other patient records will be transferred.

(b) Except when prevented by the exercise of another party's legal rights:

1. The sign shall remain in place for a period of thirty (30) days after the closure; and
2. All efforts shall be undertaken to assure a smooth transition of uninterrupted service to those affected by the closure.

(c) The posting of the sign required by paragraph (a) of this subsection shall not be required if:

1. An application for a pharmacy permit or outsourcing facility license for the same location is filed; or
2. During a sale of a pharmacy or outsourcing facility, prescription records are transferred to another permitted pharmacy or licensed outsourcing facility that is within five (5) miles of the location of the pharmacy or outsourcing facility that is sold and owned by the purchasing entity.

(4) Temporary Closure.

(a) Licensees and permit holders whose hours of operations have deviated over a period of five (5) consecutive working days from those of record at the Board of Pharmacy office shall immediately notify the Board of Pharmacy in writing of the reason for the deviation and the anticipated period of continuance.

(b) The licensee or permit holder shall notify the Board of Pharmacy in writing of the arrangements necessary to provide adequate and continued security and control of all prescription

drugs and related devices and records maintained by the licensee or permit holder.

(c) If formal business activity cannot resume within sixty (60) days or the security and control cannot be maintained, the:

1. License or permit shall be closed; and
2. Procedures for involuntary closure would be followed.

Section 3. Closure of License or Permit Due to Non-use.

(1) The Board of Pharmacy shall close a license or permit due to non-use when:

(a) The licensee or permit holder fails to notify the Board of Pharmacy of initiation of formal business activity within the first year of issuance;

(b) Inspection reveals a failure to engage in formal business activity within the first year of issuance; or

(c) Inspection reveals a failure to engaged in formal business activity within one year of renewal.

(2) A licensee or permit holder may request an extension from closure due to non-use. The request must:

- (a) Be in writing;
- (b) Include a legitimate reason for the lack of formal business activity; and

(c) Provide a date by which formal business activity will commence or resume.

(3) Upon closure of a license or permit due to non-use, the Board of Pharmacy shall follow procedures for involuntary closure to secure and dispose of any prescription drugs and related devices and records.

Section 4[3]. Duties and Responsibilities of Licensee and Permit Holder. A licensee, permit holder or person authorized to act on his behalf of the licensee or permit holder shall:

(1) Fully cooperate with the Board[board] of Pharmacy to promote the efficient administration of action required by the provisions of this administrative regulation; and

(2) Be financially liable to the Board[board] of Pharmacy for expenses incurred by the Board[board] of Pharmacy in its implementation of the provisions of this administrative regulation.

Section 5. Violation. Violations of any of these provisions shall be grounds for the discipline of the license or permit pursuant to KRS 315.121.

LARRY HADLEY, Executive Director

APPROVED BY AGENCY: June 12, 2020

FILED WITH LRC: June 12, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2020 at 9:00 a.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. 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: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation establishes the requirements relating to closure of business by licensees and permit holders.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities that provide non-dispensing pharmacy services. This administrative regulation establishes the requirements relating to closure of business by licensees and permit holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements relating to closure of business by licensees and permit holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Retitle this regulation and cleanup language to be consistent with other pharmacy permit regulations.

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

(a) How the amendment will change this existing administrative regulation: Retitle this regulation; Retitle this regulation and cleanup language to be consistent with other pharmacy permit regulations.

(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by retitling this regulation and cleanup language to be consistent with other pharmacy permit regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally by this regulation amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify previous statutory language.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the 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 will be required because of this new regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists and sponsors that desire approval for continuing education credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be the only entity impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the Board in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the Board in subsequent years.

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

BOARDS AND COMMISSIONS Board of Pharmacy (Amendment)

201 KAR 2:240. Special limited pharmacy permit – Charitable.

RELATES TO: KRS 315.035

STATUTORY AUTHORITY: KRS 315.020, 315.030, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020, 315.030, and 315.191(1)(a) ~~requires~~^{authorizes} the board to promulgate administrative regulations to prescribe the criteria for obtaining a pharmacy permit to dispense legend drugs and the procedures for the safe dispensing of legend drugs to citizens of the Commonwealth. This administrative regulation identifies the manner and procedure by which a charitable organization can be permitted to~~may~~ obtain a pharmacy permit and dispense legend drugs in the Commonwealth.

Section 1. Definitions. (1) "Charitable organization" means an organization qualified as a charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) "Legend drug sample" means an unopened package of a manufacturer's legend drug product that has been distributed to either a practitioner or the charitable pharmacy in accordance with the provisions of the Prescription Drug Marketing Act of 1987.

~~[(3)]~~ "Qualified indigent patient" means a patient of the charitable pharmacy that has been screened and approved by the charitable organization as meeting the organization's mission of providing pharmaceutical care to those who are

without sufficient funds to obtain needed legend drugs.

~~(3)~~(4) "Special limited pharmacy permit" means a permit issued to a pharmacy that provides miscellaneous specialized pharmacy service and functions.

Section 2. (1) A charitable pharmacy: ~~[(a)]~~ Shall comply with all pharmacy permit requirements except those specifically exempted by the board pursuant to paragraph (b) of this subsection; and

~~(a)~~~~[(b)]~~ May petition the board in writing to be exempted from those pharmacy permit requirements that do not pertain to the operation of that charitable pharmacy.

(2) The charitable pharmacy only shall dispense prescription legend drug samples or prescription legend drugs to qualified indigent patients of the pharmacy.

(3) The charitable pharmacy shall not charge any fee for the dispensing of prescription legend drug samples or prescription legend drugs to qualified indigent patients of the pharmacy.

(4) A charitable pharmacy may accept prescription legend drugs in their unbroken original packaging from pharmacies, wholesalers, or manufacturers, provided appropriate records of receipt and dispensing are maintained.

(5) A charitable pharmacy shall not:

(a) Accept controlled substances from pharmacies, wholesalers, or manufacturers; or

(b) Dispense controlled substances.

(6) A pharmacy that requests a special limited pharmacy permit - charitable shall submit to the board for prior approval, a plan describing the method by which the charitable pharmacy and the pharmacy will maintain a separate and distinct prescription drug stock. The failure of either pharmacy to follow the plan shall result in revocation of the special limited pharmacy permit - charitable and the pharmacy permit.

Section ~~2~~~~.[3-]~~ License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special limited pharmacy permit - charitable pharmacy on either the "Application for Special Limited Pharmacy Permit – Charitable Pharmacy or the "Application for Special Limited Pharmacy Permit – Charitable Pharmacy Renewal"; and

(2) As appropriate, the:

(a) Initial application fee established by Section 1(9), 201 KAR 2:050~~[-Section 1(9)]~~; or

(b) Renewal fee established by Section 1(10-11), 201 KAR 2:050~~[-Section 1(10) and (11)]~~.

Section ~~3~~~~.(4)]~~ Incorporation By Reference. (1) The following material is incorporated by reference:

(a) Effective January 1, 2020 "Application for Special Limited Pharmacy Permit – Charitable Pharmacy"~~[-May 2019]~~; and

(b) Effective January 1, 2020 "Application for Special Limited Pharmacy Permit – Charitable Pharmacy Renewal"~~[-May 2019]~~.

(2) This form may be obtained, inspected, or copied ~~[subject to applicable copyright law]~~ at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: June 12, 2020

FILED WITH LRC: June 12, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on 201 KAR 2:165 shall be held during the regularly scheduled Board Meeting on August 21, 2020, at 9:00 a.m. Eastern Time at Sullivan University, Louisville Campus, 2100 Gardiner Lane, Louisville, Kentucky 40205. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at

the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. 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: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the special limited pharmacy permit clinical practice.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities that provide non-dispensing pharmacy services. This administrative regulation establishes the requirements for the special limited pharmacy permit clinical practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for the special limited pharmacy permit clinical practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Retitle this regulation and cleanup language to be consistent with other special pharmacy permit regulations.

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

(a) How the amendment will change this existing administrative regulation: Retitle this regulation; Retitle this regulation and cleanup language to be consistent with other special pharmacy permit regulations.

(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by retitling this regulation and cleanup language to be consistent with other special pharmacy permit regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally by this regulation amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify previous statutory language.

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

- (a) Initially: No costs will be incurred.
- (b) On a continuing basis: No costs will be incurred.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the 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 will be required because of this new regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
- (9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists and sponsors that desire approval for continuing education credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be impacted by this administrative regulation.
 2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a).
 3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the board in the first year.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the board in subsequent years.
 - (c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.
 - (d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.
- Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. N/A
- Revenues (+/-): Zero
 Expenditures (+/-): Zero
 Other Explanation:

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amendment)

201 KAR 2:320. Requirements [Permit] or manufacturers and virtual manufacturers.

RELATES TO: KRS 315.010, 315.020(2), 315.036, [and] 315.191(1)(a), 315.400, and 315.404.
 STATUTORY AUTHORITY: KRS 315.020(2), 315.036, 315.191(1), 315.400.
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020, 315.036 and 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate the manufacturers and virtual manufacturers of drugs and related devices. [~~KRS 315.036 authorizes the board to promulgate administrative regulations regarding manufacturer permits and the~~

~~maintenance and reporting of accurate records of all drugs manufactured, received and sold. KRS 315.020(2) authorizes the Board to promulgate administrative regulations regarding the pharmacist-in-charge.] This administrative regulation establishes the requirements for [a] the regulation of manufacturers and virtual manufacturers [~~manufacturer permit and for functioning as a manufacturer~~].~~

Section 1. Definitions [~~Requirements~~].

- (1) "Component" means any raw material, ingredient or article intended for use in the manufacture of a drug and related device.
- (2) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.
- (3) "Manufacturer or virtual manufacturer" means, in addition to KRS 315.010(13), any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, conversion, or processing of a drug either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both and includes any packaging or repackaging of a drug or the labeling or relabeling of its container.
- (4) "Relabeler" means any person who owns or operates an establishment that changes the content of the labeling from that supplied from the original manufacturer for distribution under the establishment's own name. This does not include establishments that do not change the original labeling but merely add their own name.
- (5) "Repackager" has the same meaning as in KRS 315.400(16).
- (6) "Suspect product" means a product for which there is reason to believe that such product:
 - (a) Is potentially counterfeit, diverted, or stolen;
 - (b) Is potentially intentionally adulterated such that the product would result in serious adverse health consequences or death to humans or animals;
 - (c) Is potentially the subject of a fraudulent transaction; or
 - (d) Appears otherwise unfit for distribution such that the product would result in serious adverse health consequences or death to humans or animals.

Section 2. Requirements.

- (1) A manufacturer or virtual manufacturer engaging in manufacturing in the Commonwealth shall apply for a permit from the Board of Pharmacy in accordance with KRS 315.036 and this administrative regulation.
- (2) A separate permit shall be required for each facility within the Commonwealth regardless of whether joint ownership or control exists.
- (3) An agent or employee of a permit holder shall not be required to obtain a permit under this section when the agent or employee is acting in the usual course of business or employment.
- (4) A permit shall not be issued or renewed unless the applicant [~~or its officers~~] demonstrates or continues to demonstrate acceptable operational procedures, including:
 - (a) Adequate operation, maintenance, and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official [current year] United States Pharmacopoeia (USP) compendium requirements. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of components and [prescription] drugs and related devices;
 - (b) Separation [~~Physical separation~~] and quarantine of deteriorated, damaged, outdated, misbranded, adulterated, or otherwise recalled components and drugs and related devices [merchandise] until they are destroyed or returned;
 - (c) Providing accurate and precise records of all components and drugs and related devices [goods] shipped or received including source or and recipient, date, quantity, itemized description, and any other information pertinent to the

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~~[transaction] receipt and distribution or disposition;~~

~~(d) Providing proof of registration [with the state-controlled substance authority, and] with the U.S. Food and Drug Administration (FDA) and the U.S. Drug Enforcement Administration (DEA) and compliance with all [DEA] federal, state, and local laws and regulations; and~~

~~(5) Manufacturers and virtual manufacturers must comply with all requirements as outlined in the Drug Supply Chain Security Act (DSCSA), if applicable.~~

~~(6) Manufacturers and virtual manufacturers shall establish a system to:~~

~~(a) Quarantine and investigate suspect product to determine if it is illegitimate; and~~

~~(b) Notify FDA, the Board of Pharmacy, and recipient(s) of illegitimate product, if illegitimate product is found.~~

~~(7) All virtual manufacturers shall be exempt from the requirements of Section 2(4)(a) and (b), Section 5(1)(a) and (b) and (2)(a) and (b).~~

Section 2[3]. Qualifications for Permit.

~~(1)[(a)] The [Kentucky] Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in manufacture or virtual manufacture[manufacture] of [prescription] drugs and related devices within the Commonwealth:~~

~~(a)[1-] Any convictions of the officers of the applicant under any federal, state, or local laws relating to drugs, to include drug samples and controlled substances;~~

~~(b) Any felony convictions of the applicant or its officers under federal, state or local laws;~~

~~(c)[2-] The applicant's and its officers' past experience in the manufacture or virtual manufacture of [prescription] drugs and related devices, including drug samples and controlled substances;~~

~~(d)[3-] The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or virtual drug manufacturing;~~

~~[4-](d) Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant or its officers for the manufacture or virtual manufacture of any drugs and related devices, including drug samples and controlled substances;~~

~~(e)[5-] Compliance with the requirements under any previously granted license or permit, if any; and~~

~~[6-](f) Compliance with requirements to maintain or make available to the [Kentucky] Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this regulation [section].~~

~~(2)[(b)] The [Kentucky] Board of Pharmacy shall have the right to deny a permit to an applicant or its officers if it determines that the granting of that permit would not be in the public interest based on health and safety considerations for any reason established in KRS 315.124.~~

~~[(2)](3) A permit shall not be issued pursuant to this administrative regulation unless the applicant [or its officers] has furnished proof satisfactory to the Board of Pharmacy:~~

~~(a) That the applicant is [and its officers are] in compliance with all applicable federal, [and] state, and local laws and regulations relating to drugs and related devices; and~~

~~(b) That the applicant is [and its officers are] equipped as to land, buildings, and security to properly carry on the business described in the application. [~~

~~(3) A permitted manufacturer may sell or distribute federal legend drugs only to the following:~~

~~(a) A currently permitted manufacturer;~~

~~(b) A currently licensed wholesale distributor;~~

~~(c) A currently permitted pharmacy;~~

~~(d) A currently licensed practitioner;~~

~~(e) A currently licensed hospital, but only for use by or in that hospital; or~~

~~(f) A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.]~~

~~(4) A permit issued pursuant to this administrative regulation [holder] may be disciplined, suspended or revoked for failure to~~

comply with the provisions of KRS 315.020, 315.036, 315.400 [pursuant to KRS 315.124], or this administrative regulation.

~~(5) No permit shall fail to designate a pharmacist-in-charge.~~

Section 4[3]. Application, Fees[;], Renewals.

(1) An application for a permit shall be submitted to the Board of Pharmacy on "Application for a Permit to Operate as a Manufacturer or Virtual Manufacturer [~~(KBP-M 5-09)~~]."

(2) An application shall be accompanied by the annual fee set forth in 201 KAR 2:050.

(3) An application shall include:

(a) The name, full business address, and telephone number of the applicant;

(b) All trade or business names used by the applicant;

(c) Addresses, telephone numbers, and the names of the [~~contact~~] persons for the facility used by the permit holder [~~permittee~~] for the storage, handling, and manufacturing or virtual manufacturing of drugs and related devices [~~prescription drugs~~];

(d) The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship);

(e) The name(s) of the owner and operator of the permit holder [~~permittee~~], including:

1. If a person, the name and Social Security number of the person;

2. If a partnership, the name and Social Security number of each partner, and the name of the partnership;

3. If a corporation, the name, Social Security number and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

4. If a sole proprietorship, the full name and social security number of the sole proprietor and the name of the business entity; and

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to manufacture, virtual manufacture or possess [~~prescription~~] drugs and related devices.

(4) All permits shall:

(a) Expire on September 30 following the date of issuance; and

(b) Be:

1. Renewable annually thereafter upon renewal [~~proper~~] application accompanied by the renewal fee set forth in 201 KAR 2:050; and

2. Nontransferable.

Section 4[5]. Standards.

(1) Facilities.

(a) All facilities [buildings] in which components and [~~legend~~] drugs and related devices are labeled, relabeled, packaged, repackaged, stored, held, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.

(b) All facilities [Buildings] shall meet all applicable federal, state, and local standards. The facility shall [~~have a~~] quarantine components and [~~area for storage of prescription~~] drugs and related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated, [~~or that are in immediate or sealed secondary containers that have been opened~~].

(c) A facility shall not be located in a residence.

(2) Security.

(a) A manufacturer shall be equipped with an alarm system to detect entry after hours.

(b) A manufacturer shall ensure that access from outside their premises is well-controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where components [~~legend~~] and drugs and related devices are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A permit holder shall employ adequate personnel with the education and experience necessary to safely and lawfully

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engage in the manufacture or virtual manufacture[manufacturer] of [prescription] drugs and related devices.

(e) Lists of officers, directors, managers and other persons in charge of manufacture or virtual manufacture, distribution or disposition, storage, and handling of components and [prescription] drugs and related devices, including a description of their duties and summary of their qualifications, shall be maintained for purpose of review.

(3) Recordkeeping.

(a) Inventories and other records [of transactions] regarding the receipt and distribution or disposition of components [legend] and drugs and related devices shall be maintained and readily available for inspection or photocopying by the Board of Pharmacy and authorized law enforcement officials for a period six (6) [of two (2)] years following disposition of the drugs]. These records shall include:

1. The business name and address of the source of the components and drugs and related devices including the [name and principal address of the] seller or transferor and the address of the location from which the components and drugs and related devices were shipped;

2. The business name and address to whom components and drugs and related devices were shipped including the purchaser and the address of the location where the components and drugs and related devices were shipped;

3[2]. The identity and quantity of the components and drugs and related devices received and distributed or disposed of; and

3[4]. The dates of receipt and distribution or disposition [other distribution] of the components and drugs and related devices.

(b) The manufacturer or virtual manufacturer shall keep production and process control records for a period of six (6) years following completion of manufacturing.

(c)[b]) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by the Board of Pharmacy or an authorized official of a federal, state, or local law enforcement agency.

(d) Manufacturers and virtual manufacturers shall maintain an ongoing list of verified persons and businesses with whom they do business.

(e) A permitted manufacturer and virtual manufacturer may sell or distribute drugs and related devices only to the following:

1. A currently permitted manufacturer or virtual manufacturer;

2. A currently licensed third-party logistics provider;

3. A currently licensed wholesaler;

4. A currently permitted pharmacy;

5. A currently licensed outsourcing facility;

6. A currently licensed practitioner;

7. A currently permitted repackager or relabeler;

8. A currently licensed hospital, but only for use by or in that hospital; or

9. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.

[(d)](f) Manufacturers and virtual manufacturers shall maintain a system for the mandatory reporting of any theft, suspected theft, diversion, or other significant loss of any component or drug or related device to the Board of Pharmacy and where applicable the FDA and DEA.

(4) Written policies and procedures.

(a) A manufacturer or virtual manufacturer shall establish, maintain, and adhere to written policies and procedures for [the] all operations including production, process controls, receipt, security, storage, inventory, and distribution or disposition of components and [prescription] drugs and related devices, [including policies and procedures for identifying, recording, and reporting losses or thefts and to ensure that the manufacturer prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency].

(b) There shall be written policies and procedures for identifying, recording, and reporting losses or thefts.

(c) There shall be written policies and procedures to assure that the manufacturer and virtual manufacturer prepares for, protects against, and handles crisis situations that affect the security, or operation, and records of the facility permit holder. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(d) [(b)] There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(e) [(e)] There shall be written policies and procedures to assure that any outdated stock components or drugs or related devices or any [stock] components or drugs or related devices with an expiration date that, in the manufacturer's or virtual manufacturer's view, does not allow sufficient time for repackaging or resale shall be segregated from other stock and shall be prepared for return or otherwise destroyed, and this shall be documented.

(f) [(d)] There shall be written policies and procedures by which the manufacturer or virtual manufacturer exercises control over the shipping and receiving of all-[stock] components and drugs and related devices within the operation.

(g) There shall be written policies and procedures for investigating suspect product and reporting illegitimate product to the Board of Pharmacy, FDA and recipient(s) of illegitimate product.

(5) Returned, damaged, and outdated [prescription] drugs and related devices. A manufacturer [manufacturer's] or virtual manufacturer [operation] shall maintain and follow a written procedure to assure the proper handling and disposal of returned components or drugs or related devices [goods]. If conditions under which a [prescription] drug or related device has been returned cast doubt on the drug's or related device's safety, identity, strength, quality, or purity, then the drug or related device shall be destroyed, or returned to the supplier, unless examination, testing, or other investigation proves that the drug or related device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug or related device has been returned cast doubt on the drug [drug's] or related device's safety, identity, strength, quality, or purity, the manufacturer or virtual manufacturer shall consider, among other things, the conditions under which the drug or related device has been held, stored, or shipped before or during its return and the condition of the drug or related device and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A manufacturer or virtual manufacturer shall adopt, maintain, and follow a written policy and procedure for handling recalls and withdrawals of [products] components or drugs or related devices. The policy shall cover all recalls and withdrawals [of drug products] due to:

(a) Any voluntary action on the part of the manufacturer or virtual manufacturer;

(b) The direction of the FDA [Food and Drug Administration], or any other federal, state, or local government agency; and

(c) Replacement, relabeling, or repackaging of existing component or drug or related devices [merchandise with an improved product or new package design].

(7) Procedures.

(a) A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock. [

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the first expiration inventory is distributed first.]

(b)[(e)] A manufacturer or virtual manufacturer shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to [prescription] drug product and related devices salvaging or reprocessing.

Section 6[5]. Pharmacist-in-charge. A manufacturer or virtual manufacturer shall designate a pharmacist-in-charge of the facility [who shall be responsible to the board for security and

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recordkeeping]. The pharmacist-in-charge shall review the security and records by conducting and documenting an on-site inspection not less than quarterly.

Section 7[6]. Violations.

(1) A drug manufacturer or virtual manufacturer shall not distribute [legend] prescription drugs and related devices directly to a consumer or a patient [or operate in a manner that endangers the public health].

(2) A manufacturer or virtual manufacturer shall not operate in a manner that endangers the public health.

(3) [(2)] Violation of any of these provisions shall be grounds for the discipline, suspension, or revocation of the permit [pursuant to KRS 315.124].

Section 8[7]. Incorporation by Reference.

(1) "Application for a Permit to Operate as a Manufacturer or Virtual Manufacturer", [6/99], 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 40601-8024, [Spindletop Administrative Building, Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40514,] Monday through Friday, 8 a.m. through 4:30 p.m.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2020 at 9:00 a.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. 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: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for Manufacturers and virtual manufacturers.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities that provide non-dispensing pharmacy services. This administrative regulation establishes the requirements for Manufacturers and virtual manufacturers

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for Manufacturers and virtual manufacturers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Retitle this regulation and cleanup language to be consistent with Federal 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: Retitle this regulation; Retitle this regulation and cleanup language to be consistent with Federal law.

(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by retitling this regulation and cleanup language to be consistent with Federal law

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally by this regulation amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify previous statutory language.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the 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: The fee for wholesale distributor permit will be increased by \$25.00

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does establish fees and this amendment increases the fee for wholesale distributors from \$100.00 to \$125.00.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists and sponsors that desire approval for continuing education credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be the only entity impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is estimated this administrative regulation will generate an annual increase in revenue in the amount of \$106,800.00 for the Board in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is estimated this administrative regulation will generate an annual increase in revenue in the amount of \$106,800.00 for the Board in the first year.

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): Regulation will provide an annual \$106,800.00 increase in revenue.

Expenditures (+/-): There will be no expenditures.

BOARDS AND COMMISSIONS
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:041. Licensing; standards, fees.

RELATES TO: KRS 312.085, 312.095, 312.145, 312.175

STATUTORY AUTHORITY: KRS 312.019, 312.085, 312.095, 312.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes the procedures relating to application for licensure, license renewal, and fees.

Section 1. Initial Application. An applicant for initial licensure shall submit to the board:

- (1) A completed New Licensee Application; and
- (2) A nonrefundable application fee of \$350.

Section 2. Licenses. Each license by the board shall:

- (1) Set forth the:
 - (a) Name of the issuing board;
 - (b) Name of the licensee;
 - (c) Number of license; and
 - (d) Date of the license issuance;
- (2) Be signed by a minimum of three (3) members of the board; and
- (3) Have the seal of the board affixed.

Section 3. License Renewal. (1)(a) Each licensee of the board shall annually renew the license on or before the first day of March.

- (b)1. A licensee seeking active status shall:
 - a. Submit a completed Application for Annual License Renewal; and
 - b. Pay a renewal fee of \$250.
- 2. A licensee seeking inactive status shall:
 - a. Submit a completed Annual Inactive License Renewal Application; and
 - b. Pay a renewal fee of seventy-five (75) dollars.
- (2) The amount of the restoration fee established by KRS 312.175(2) and (4) shall be \$250 per year, or any part of a year.
- (3) Continuing education requirements.
 - (a) Each active licensee shall complete at least twelve (12) hours of board-approved continuing education, with [:

~~1. a minimum of six (6) hours obtained within Kentucky;] a minimum of six (6) hours of the required twelve (12) hours must be obtained at a live event.~~

2. No more than eight (8) hours completed in a day; and

3. Proof of completion submitted with the Application for Annual License Renewal upon request by the Board.[:]

(b) A new licensee shall complete a two (2) hour jurisprudence course, provided by the board, ~~[prior to the first license renewal]~~ within one (1) year of the date of their initial license approval. The course shall account for two (2) of the twelve (12) hours of continuing education required by paragraph (a) of this subsection.

(c) A new licensee must complete their required 12 hours of continuing education by the first relicensing period following the completion of their first calendar year in practice.

(d) An inactive licensee may renew the inactive license without meeting the continuing education requirements required by this subsection.

Section 4. Activation of an Inactive License.

(1) To activate an inactive license, a licensee shall submit:

(a) A completed Application for Activation or Reinstatement of Kentucky License; (b) The renewal fee required by Section 3(1)

(b) of this administrative regulation;

(c) Proof that the licensee has met the continuing education requirements established by Section 3(3) of this administrative regulation; and

(d) License verification from each state or jurisdiction from which the licensee has held a license.

(2) If the licensee was inactive for more than four (4) years, proof of successfully passing the Special Purposes Examination for Chiropractic given by the National Board of Chiropractic Examiners within the past six (6) months shall be submitted to the board.

Section 5. Denial or Refusal of License. The board may deny or refuse to renew a license if an applicant or licensee:

(1) Has a conviction for a felony or violation of any law involving moral turpitude; or

(2) Violates any of the provisions of KRS Chapter 312 or 201 KAR Chapter 21.

Section 6. Change of Address. Each licensee shall notify the board within ten (10) days of each change of mailing address or place of business.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "New Licensee Application", 2016;

(b) "Application for Annual License Renewal", November 2009;

(c) "Annual Inactive License Renewal Application", 2013; and

(d) "Application for Activation or Reinstatement of Kentucky License", 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, ~~[209 South Green Street, Glasgow, Kentucky 42142;] 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

JEFF SMITH, Board Chair

APPROVED BY AGENCY: May 8, 2020

FILED WITH LRC: May 22, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made

unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to continuing education.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for continuing education

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

(a) How the amendment will change this existing administrative regulation: The Amendment will allow licensees to obtain a portion of continuing education from on-line sources.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow chiropractors to obtain continuing education without attending in person classes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to continuing education.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for continuing education

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will allow chiropractors to obtain continuing education from sources other than live, in-person providers

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed chiropractor in obtaining continuing education.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to obtain

continuing education from other than live, in-person providers.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

BOARDS AND COMMISSIONS
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:042. Standards, application and approval of continuing education

RELATES TO: KRS 312.085, 312.095, 312.145, 312.175
STATUTORY AUTHORITY: KRS 312.019, 312.085, 312.095, 312.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS

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312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes the procedures relating to [standards-] application[-] and approval of[for] continuing education.

Section 1. Standards for Continuing Education. (1) Continuing education shall be either:

(a) A post graduate course of study at or sponsored by a chiropractic college accredited by the Council on Chiropractic Education or its successors; or

(b) A continuing education program approved by the board, or a committee designated by the board to act between sessions of the board.

(2) The continuing education program shall be:

(a) Sponsored by a national or state chartered organization of chiropractors; and

(b) Open to all doctors of chiropractic in Kentucky who desire to attend.

(3) The instructors and speakers shall be in the field of chiropractic, chiropractic education, or allied sciences.

(a)[(4)] The programs to be presented shall contain subjects of clinical benefit to licensees and on a postgraduate level of education.

Section 2. Requirements for Online Continuing Education. (1) Any entity submitting an online course for approval must be PACE certified and submit the program through the PACE precheck program. Any entity not certified through PACE can submit an application for approval for a program directly to the Board through December 31, 2020.

(2) Any entity submitting an online course for approval must be PACE certified and submit the program through the PACE precheck program.

(2) The program shall have a mechanism to ensure that users view each page of the program;

(3) The program shall ensure the user has earned all of the time required for the program;

(4) The program shall have a mechanism in place for the user to be able to contact the provider regarding questions about the continuing education programs;

(5) The program shall include a mechanism to evaluate the user's knowledge of the subject matter contained in the program;

(6) The program shall provide a printed verification or allow the user to print verification only upon completion of the program;

(7) The program shall ensure that the course time cannot be earned away from the program and shall ensure automatic lock out if the keyboard becomes unattended;

(8) Programs shall be earned one at a time. The program shall not earn credit for multiple windows or programs completed simultaneously.

Section 3. Application for Approval. (1) The sponsoring party of a proposed educational program for license renewal shall apply for approval of the program prior to its presentation by providing to the board:

(a) The name of the course;

(b) The name of the sponsoring organization;

(c) The objective of the program;

(d) The number of classroom hours over which the educational program will be presented and the dates presented;

(e) The names of the instructors and speakers and the name and address of the institution with which they are associated, if applicable;

(f) The instructors' or speakers' educational background and other relevant qualifications;

(g) The name and address of the person authorized to certify attendance; and

(h) An [A non-refundable] educational program review fee of [twenty-five (25) dollars for programs with one (1) date and one (1) location or \$100 for programs with multiple dates and locations.]

(i) Live Events Only -A minimum fee of twenty-five (25) for a live one- time event of sixteen (16) hours or less. Any event over

16 hours will be \$2.00 per requested credit hour with a maximum fee of \$100. For events with multiple dates and locations there will be an additional twenty-five (25) dollars fee.

(ii) Online Events Only- A minimum fee of twenty-five (25) dollars for a live one- time event or recorded event of 16 hours or less. Any event over 16 hours will be \$2.00 per requested credit hour with a maximum fee of \$100. The online event will remain approved for 1 calendar year.

(iii) Live Event That Will Also Be Recorded To Be Used As Online CE – A minimum fifty (50) dollars for an event of sixteen (16) hours or less. Any event over sixteen (16) hours will be two (2) dollars per requested credit hour with a maximum fee of \$100. The online event will remain approved for one (1) calendar year.

(2) The educational program may be monitored by an officer of the board, the field coordinator of the board, or a person designated by the president of the board.

(3)(a) A proposed program [~~shall be submitted to~~] must be received by the board for approval at least sixty (60) days prior to the date of the presentation.

(b) The board, or a designee of the board to act between meetings of the board, shall give written notification of the board's approval or disapproval of the program to the sponsoring party not more than thirty (30) days after receiving the proposed educational program.

(c) An online course will remain approved for one (1) calendar year from a date of the event providers choosing so long as that date is no earlier than sixty (60) days from the date the Board received the submission for approval. [Within thirty (30) days of completion of the program, the sponsoring party shall submit to the board an individual, written certification of the:

1. Name and license number of each licensee in attendance at the program;

2. Sessions attended by each licensee; and

3. Number of hours of each session attended.]

Section 4. Incorporated by Reference. (1) The following forms are incorporated by reference:

(a) "PACE application", (2020); and

(b) "Application for approval to provide CE program", (2020).

(2) These materials may be reviewed at the Kentucky Board of Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m.

JEFF SMITH, Board Chair

APPROVED BY AGENCY: May 8, 2020

FILED WITH LRC: May 22, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to continuing education.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for continuing education

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

(a) How the amendment will change this existing administrative regulation: The Amendment will allow licensees to obtain a portion of continuing education from on-line sources.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow chiropractors to obtain continuing education without attending in person classes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to continuing education.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for continuing education

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will allow chiropractors to obtain continuing education from sources other than live, in-person providers

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed chiropractor in obtaining continuing education.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to obtain continuing education from other than live, in-person providers.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No increases in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS Board of Chiropractic Examiners (Amendment)

201 KAR 21:095. Licensure, registration, and standards of persons performing peer review.

RELATES TO: KRS 312.175, 312.200(3)

STATUTORY AUTHORITY: KRS 312.019(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the board to promulgate administrative regulations. KRS 312.200(3) requires that persons performing peer review of chiropractic claims be licensed by the board, complete annually a board approved utilization review course, and annually register with the board and pay a registration fee. This administrative regulation establishes the requirements for the licensure, review course, registration, and registration fee for persons to perform peer review services.

Section 1. Requirements for Licensure and Registration. A person performing chiropractic peer review shall:

(1) Hold a current active license to practice chiropractic within the Commonwealth of Kentucky;

(2) (a) For the first year that a person seeks to register to perform peer review, have previously successfully completed a

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course consisting of a minimum of 100 hours of utilization review and independent medical examination from a chiropractic college or university accredited by the Council on Chiropractic Education; and

(b) ~~[For each year thereafter that a person seeks to register to perform peer review, have completed six (6) hours of utilization review offered by a chiropractic college or university accredited by the Council on Chiropractic Education, which shall be obtained within the Commonwealth of Kentucky;] For each year thereafter that a person seeks to register to perform peer review, have completed six (6) hours of continuing education in topics specifically related to utilization review and approved by the KBCE to meet this requirement which shall be obtained at a live, in-person event, which shall be obtained within the Commonwealth of Kentucky; and~~

(3) Register annually with the board, by June 1 of each year, by:

(a) Presenting evidence of satisfactory compliance with the requirements established in this section and of having met the education requirements of KRS 312.175;

(b) Completing the Registration Form for Persons Performing Peer Review of Kentucky Chiropractic Claims; and

(c) Paying a registration fee of fifty (50) dollars.

Section 2. In performing peer review activities, a licensee shall:

(1) Render the actual review service and documented report;

(2) Personally retain a copy of all records associated with each peer review case for a minimum of seven (7) years;

(3) Employ minimum standards associated with the practice of chiropractic and comply with the code of ethical conduct established in 201 KAR 21:015;

(4) Provide a report that includes the rationale for the determination in order that the licensee provider is given adequate information to appeal;

(5) Sign all reports, unless the review is performed under the Kentucky Chiropractic Board of Examiners Peer Review Committee, in which case, the board's administrator or designee shall sign the determination;

(6) Review in accordance with accepted standards as defined in 201 KAR 21:001;

(7) Review thoroughly and rely on all documents provided to the reviewer;

(8) List in the resulting report all documents provided to the reviewer and list all documents reviewed; and

(9) Personally conduct the review and prepare the report.

Section 3. Complaint Procedure Related to Peer Reviewers. A complaint against a peer reviewer alleging a violation of this administrative regulation or any other provision of KRS Chapter 312 or 201 KAR Chapter 21 shall be filed and processed according to the procedure established in 201 KAR 21:051.

Section 4. Incorporation by Reference.

(1) "Registration Form for Persons Performing Peer Review of Kentucky Chiropractic Claims" 2013, is incorporated by reference.

(2) ~~[This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky 42141, Monday through Friday, 8:00 a.m. to 4:30 p.m.] These materials may be reviewed at the Kentucky Board of Chiropractic Examiners, 500 Mero Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m.~~

JEFF SMITH, Board Chair

APPROVED BY AGENCY: May 8, 2020

FILED WITH LRC: May 22, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to

attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to continuing education for peer reviewers.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to continuing education for peer reviewers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for continuing education for peer reviewers.

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

(a) How the amendment will change this existing administrative regulation: The Amendment will allow licensees to obtain a portion of continuing education from on-line sources.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow chiropractors to obtain continuing education without attending in person classes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements related to continuing education for peer reviewers.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for continuing education

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will allow chiropractors to obtain continuing education from sources

other than live, in-person providers

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed chiropractor in obtaining continuing education.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to obtain continuing education from other than live, in-person providers.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

BOARDS AND COMMISSIONS

Board of Podiatry
(Amendment)

201 KAR 25:011. Approved schools; licensure application; fees.

RELATES TO: KRS 218A.205, 311.420, 311.480

STATUTORY AUTHORITY: KRS 218A.202(2), 311.420(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

311.420 requires all persons engaging in the practice of podiatry in Kentucky to be licensed by the Board of Podiatry. KRS 311.420 provides that each applicant shall submit to an examination conducted by the board. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). KRS 218A.205 requires the board to place restrictions on licensees and applicants that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation establishes the procedures to be followed in obtaining an application, the fees to be charged, and the procedures relating to the examination and issuance of a license to practice podiatry in this state.

Section 1. (1) The board approves the following schools or colleges of podiatry as having standards and requirements adequate to satisfy the educational requirement for taking the podiatry examination for licensure:

(a) Barry University School of Podiatric Medicine, Miami Shores, Florida;

(b) California School of Podiatric Medicine at Samuel Merritt University, Oakland, California;

(c) Des Moines University College of Podiatric Medicine and Surgery, Des Moines, Iowa;

(d) Kent State University College of Podiatric Medicine, Independence, Ohio;

(e) Midwestern University Arizona School of Podiatric Medicine, Glendale, Arizona;

(f) New York College of Podiatric Medicine, New York, New York;

(g) Dr. William M. Scholl College of Podiatric Medicine at the Rosalind Franklin University of Medicine and Science, Chicago, Illinois;

(h) Temple University School of Podiatric Medicine, Philadelphia, Pennsylvania; and

(i) Western University of Health Sciences College of Podiatric Medicine, Pomona, California.

(2) All other schools or colleges of podiatry shall have academic standards and requirements equivalent to the schools or colleges listed above as evaluated by the board in order to be approved by the board. Evaluation of the academic standards and requirements shall be made by the board after an applicant has filed an Application for Podiatry License with the board.

Section 2. (1) Every applicant, otherwise eligible to take the examination pursuant to the provisions of KRS 311.420, shall file a completed and notarized Application for Podiatry License with the board at its principal office at least forty (40) days prior to the date of the examination in order to be eligible to take the examination.

(2) The president of the board may permit a partially completed application to be filed if good cause is shown by the applicant. For the purposes of this subsection, good cause includes situations such as an applicant applying late, having to retake the board examination, or waiting for pending board examination results.

(3) The fee for the examination or reexamination shall be [250] 300 and shall be paid when the Application for Podiatry License is filed with the board. The fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check, or postal money order and shall not be refundable.

(4) Any applicant who fails to attain a passing score as required by the board may apply to the board for reexamination.

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(5) The applicant along with the application shall: (a) Have three (3) letters of recommendation sent to the board verifying good moral character and not addicted to alcohol or drugs;

(b) Have verification of licensure sent directly from the state or states from which the applicant has or has ever held a license;

(c) Attach a dated photo taken within the past six (6) months;

(d) Have schools, colleges, or institutions send official transcripts directly to the board; and

(e) Have the Federal Bureau of Investigation background check results sent directly to the board.

Section 3. (1) Prior to approval for licensure, an applicant shall:

(a) Submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation;

(b) Submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services; and

(c) Report to the board, with the Application for Podiatry License, any conviction or disciplinary action on a license held by the applicant relating to prescribing or dispensing controlled substances.

Section 4. (1) Pursuant to KRS 218A.205(3)(e), an applicant for licensure by the board:

(a) Convicted after July 20, 2012 of any felony offense relating to controlled substances shall be permanently banned from prescribing or dispensing a controlled substance by the board;

(b) Convicted after July 20, 2012 of any misdemeanor offense relating to prescribing or dispensing a controlled substance shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; or

(c) Who has had any disciplinary limitation placed on an application or license by a licensing board of another state that resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be subject to a restriction on the license that is at least as restrictive in time and scope as that placed on the license by the licensing board of the other state.

(2) In addition to the actions listed in subsection (1) of this section, the board may take any other action provided for in KRS 311.480 against a licensee or applicant that comes under the provisions of that subsection.

Section 5. Requirements for a person issued a license by the board. (1) A person who has been approved for a license from the board shall register with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) administered by the Cabinet for Health and Family Services after issuance of the license and immediately submit proof of the registration to the board.

(2) A person who has received a license from the board shall not prescribe any controlled substance before he or she is registered with KASPER.

(3)(a) The board shall temporarily suspend a license pursuant to 201 KAR 25:051, Section 6, if a licensee:

1. Fails to register with KASPER after the approval for licensure by the board; or

2. Prescribes a controlled substance prior to registration with KASPER.

(b) In addition to the temporary suspension, the board may take additional disciplinary action against a license pursuant to KRS 311.480.

Section 6. Incorporation by Reference. (1) "Application for Podiatry License", February, 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Podiatry, Department of Professional Licensing, 500 Mero Street [914 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH MYRICK, Board Chair

APPROVED BY AGENCY: May 7, 2020

FILED WITH LRC: May 26, 2020 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2020, at 2:00 p.m., in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311.420 requires that any person who wishes to practice podiatry in the Commonwealth of Kentucky be licensed to do so. This regulation establishes requirements for making an application for licensure.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 311.420.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.420 requires that any person who wishes to practice podiatry in the Commonwealth of Kentucky be licensed to do so. This regulation establishes requirements for making an application for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 311 by carrying out the legislative mandate for the board to establish requirements for licensure.

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

(a) How the amendment will change this existing administrative regulation: The Amendment will increase the fee for making an application for licensure.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to increase revenue for the board to continue its operations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311.420 requires that any person who wishes to practice podiatry in the Commonwealth of Kentucky be licensed to do so. This regulation establishes requirements for making an application for licensure.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 311 by carrying out the legislative mandate for the board to establish requirements for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 242 licensed podiatrists practicing in the Commonwealth of Kentucky, an unknown number of potential applicants for licensure.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will

require a slightly higher application fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation will add \$50.00 to the existing application fee.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow the board to continue in operation, as its operating costs are borne out of licensure fees.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Podiatry is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment increases the application fee by \$50.00.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 311

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

BOARDS AND COMMISSIONS
Board of Podiatry
(Amendment)

201 KAR 25:021. Annual renewal of licenses, fees.

RELATES TO: KRS 218A.205, 311.450, 311.480
STATUTORY AUTHORITY: KRS 218A.202(2), 311.410(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450 requires the board to send notices to all podiatrists licensed by the board to their last known address on or before June 1 of each year. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). KRS 218A.205 requires the board to place restrictions on licensees and applicants that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation requires all licensed podiatrists to complete the annual renewal application and return it, along with the annual renewal fee, to the board. This administrative regulation further establishes an annual license renewal fee and a delinquent penalty fee.

Section 1. (1) The annual renewal fee in the amount of [~~\$175~~] \$200 shall be attached to the completed annual Kentucky Board of Podiatry License Renewal Application when the application is returned to the board by the podiatrist seeking licensure renewal.

(2) The annual renewal fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check, postal money order, personal check, or credit card.

(3) All information requested on the annual renewal application form shall be furnished to the board when the completed annual renewal application form is returned to the board, together with a statement of compliance with the continuing education requirements in 201 KAR 25:031.

(4) Every renewal application shall include proof of current registration with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) administered by the Cabinet for Health and Family Services.

Section 2. (1) Failure to complete the requirements for annual renewal of the license by July 1 of each year shall result in a delinquent penalty fee of \$200 in addition to the renewal fee.

(2) A licensee shall immediately report to the board any conviction or disciplinary action on a license held by the applicant relating to prescribing or dispensing controlled substances.

Section 3. (1) Pursuant to KRS 218A.205(3)(e), a licensee:

(a) Convicted after July 20, 2012 of any felony offense relating to controlled substances shall be permanently banned from prescribing or dispensing a controlled substance by the board;

(b) Convicted after July 20, 2012 of any misdemeanor offense relating to prescribing or dispensing a controlled substance shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; or

(c) Who has had any disciplinary limitation placed on an application or license by a licensing board of another state that resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be subject to a restriction on the license that is at least as restrictive in time and scope as that placed on the license by the licensing board of the other state.

(2) In addition to the actions listed in subsection (1) of this section, the board may take additional disciplinary action against a licensee pursuant to KRS 311.480.

Section 4. Incorporation by Reference. (1) "Kentucky Board of Podiatry License Renewal Application", 8/15, is incorporated by reference

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Podiatry, Department of Professional Licensing, [911–Leawood Drive] 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH MYRICK, Board Chair

APPROVED BY AGENCY: May 7, 2020

FILED WITH LRC: May 26, 2020 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on August 26, 2020, at 2:00 p.m., in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING
STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311.420 requires that any person who wishes to practice podiatry in the Commonwealth of Kentucky be licensed to do so. This regulation establishes requirements for making an application for renewal of licensure.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 311.420.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.420 requires that any person who wishes to practice podiatry in the Commonwealth of Kentucky be licensed to do so. This regulation establishes requirements for making an application for renewal of licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 311 by carrying out the legislative mandate for the board to establish requirements for licensure.

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

(a) How the amendment will change this existing administrative regulation: The Amendment will increase the fee for making an application for renewal of licensure.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to increase revenue for the board to continue its operations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311.420 requires that any person who wishes to practice podiatry in the Commonwealth of Kentucky be licensed to do so. This regulation establishes requirements for making an application for renewal of licensure.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 311 by carrying out the legislative mandate for the board to establish requirements for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 242 licensed podiatrists practicing in the Commonwealth of Kentucky, an unknown number of potential applicants for licensure.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will require a slightly higher application fee for renewal of licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation will add \$25.00 to the existing application fee.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow the board to continue in operation, as its operating costs are borne out of licensure fees.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Podiatry is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment increases the application fee by \$25.00.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 311

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS
Kentucky Board of Podiatry

(Amendment)

201 KAR 25:031. Continuing education.

RELATES TO: KRS 218A.205, 311.450(2)
STATUTORY AUTHORITY: KRS 218A.205(3)(h), 311.410(4), 311.450(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450(2) requires the board to promulgate an administrative regulation to establish continuing education requirements for a podiatrist. KRS 218A.205(3)(h) requires the board to mandate continuing education related to the use of the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). This administrative regulation establishes those continuing education requirements.

Section 1. (1) Each podiatrist licensed by the board shall annually complete twenty (20) hours of continuing education relating to the practice of podiatry.

(2) The twenty (20) hours shall include:

(a) At least fifteen (15) Category A continuing education hours; and

(b) Not more than five (5) Category B continuing education hours.

(3) A continuing education hour shall equal fifty (50) clock minutes of participating in continuing education instruction or presentation that meets the requirements of this administrative regulation for continuing education courses.

(4)(a) Beginning on July 1, 2012, and annually thereafter, each podiatrist licensed by the board shall complete at least one and one-half (1.5) hours of continuing education related to the use of the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER), pain management, or addiction disorders.

(b) This requirement shall be included in the twenty (20) hours of continuing education required by this administrative regulation.

Section 2. Categories of Continuing Education Hours. (1) A Category A continuing education hour shall specifically relate to podiatric medicine, surgery, or science and shall:

(a) Be earned by attendance at:

1. A professional seminar, including the Kentucky Podiatric Medical Association's annual conference;

2. An accredited school of podiatry continuing education program; or

3. Another program approved by the board under Section 6 of this administrative regulation; and

(b) Be approved by the American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME), except if the course provider or the licensee that intends to take a course has requested and received board approval of the course under Section 6 of this administrative regulation prior to the course's presentation.

(2) A Category B continuing education hour may relate to non-podiatric medical issues or general practice issues and may be earned by attendance at or participation in:

(a) Home study courses;

(b) Hospital, clinic, or in-house staff lectures; or

(c) Local or regional medical society or medical association meetings.

Section 3. (1) A licensee shall keep a valid record of each continuing education program completed. The record shall:

(a) Include a receipt or certification received for the program;

(b) Be kept for three (3) years;

(c) Be presented upon request by the board for audit. If selected by the board for audit, the licensee shall submit the requested proof of continuing education to the board within fifteen (15) days of the request; and

(d) For Category A programs, include proof of APMA/CPME certification or a written letter of approval from the board.

(2) The period during which continuing education courses shall be completed shall be from July 1 of each year until June 30 of the following year.

Section 4. (1) On application, the board shall consider granting a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

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

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

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

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

(b) Accompanied by a document verifying the illness or disability signed by the:

1. Licensee's personal physician; or

2. Immediate family member's personal physician.

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

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

Section 5. Inactive Status. (1) A licensee may apply for inactive status by submitting a written letter to the board.

(2) A licensee granted inactive status shall be relieved of the obligation to meet the requirements for continuing education established in this administrative regulation.

(3) A person on inactive status may use the term "podiatrist" but the licensee shall not engage in the practice of podiatry. Any person who practices podiatry while on inactive status shall be deemed to be practicing podiatry without a license in violation of KRS 311.400.

(4) A licensee seeking relicensure from inactive to active status shall fulfill the requirements established in this subsection.

(a) If the licensee has been inactive for no more than five (5) consecutive years, the licensee shall:

1. Provide written notice to the board requesting reactivation to active status by filing a Kentucky Board of Podiatry License Renewal Application, as incorporated by reference in 201 KAR 25:021, and requesting in writing that the license be made active;

2. Have completed twenty (20) hours of Category A continuing education requirements within a period of six (6) months preceding the request for active status; and

3. Pay:

a. The renewal fee of \$175 established in 201 KAR 25:021, Section 1; and

b. A reactivation fee of [~~\$200~~]\$250.

(b) If a licensee has been in inactive status for more than five (5) consecutive years, the licensee shall:

1. File a completed Application for Podiatry License in accordance with 201 KAR 25:011 and pay the required fee;

2. Be approved by the board to take the examination; and

3. Successfully complete a satisfactory examination before the board as provided by 201 KAR 25:012.

Section 6. Board Approval of Continuing Education. (1) A course provider or a licensee shall submit a written request to the board for approval of a continuing education course.

(2) A written request for board approval shall contain:

(a) A brief summary of the continuing education;

(b) The educational objectives of the continuing education;

(c) The date, time, and place of the provision of the continuing education;

(d) The name and credentials of the individual providing the continuing education; and

(e) The name of the organization providing the continuing education, if applicable.

(3) In determining whether to approve continuing education, the board shall consider whether the continuing education:

(a) Is designed to provide current developments, skills,

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procedures, or treatments related to the practice of podiatry;

(b) Is developed and provided by an individual with knowledge and experience in the subject area; and

(c) Contributes directly to the professional competence of a licensee.

KEITH MYRICK, Board Chair

APPROVED BY AGENCY: May 7, 2020

FILED WITH LRC: May 26, 2020 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2020, at 2:00 p.m., in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311.420 requires that any person who wishes to practice podiatry in the Commonwealth of Kentucky be licensed to do so. This regulation establishes requirements for making an application for reactivation of licensure.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 311.420.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311.420 requires that any person who wishes to practice podiatry in the Commonwealth of Kentucky be licensed to do so. This regulation establishes requirements for making an application for reactivation of licensure.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 311 by carrying out the legislative mandate for the board to establish requirements for licensure.

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

(a) How the amendment will change this existing administrative regulation: The Amendment will increase the fee for making an application for reactivation of licensure.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to increase revenue for the board to continue its operations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311.420 requires that any person who wishes to practice podiatry in the Commonwealth of Kentucky be licensed to do so. This regulation establishes requirements for making an application for reactivation of licensure.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 311 by carrying out the legislative mandate for the board to establish requirements for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 242 licensed podiatrists practicing in the Commonwealth of Kentucky, an unknown number of potential applicants for licensure.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will require a slightly higher application fee for reactivation of licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation will add \$50.00 to the existing application fee.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow the board to continue in operation, as its operating costs are borne out of licensure fees.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Podiatry is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment increases the application fee by \$50.00.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 311

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE
SYSTEM
Kentucky Board of Emergency Medical Services
(Amendment)**

202 KAR 7:201. Emergency Medical Responders [First responders].

RELATES TO: KRS 311A.010, 311A.025, 311A.030, 311A.060, 311A.095, 311A.110, 311A.140, 311A.145, 311A.160
STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.110, 311A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and 311A.160 require the board to establish standards relating to emergency medical[~~first~~] responders.

Section 1. Emergency Medical Responder [First Responder] Student Eligibility. (1) Individuals shall be eligible to enroll as a student in an Emergency Medical Responder [first responder] training program if the applicant:

(a) Is at least fifteen (15) years of age; and

(b) [~~1-~~] Is currently enrolled in grades 9-12 with a minimum GPA of 2.0; or

(c) [~~2-~~] Holds a high school diploma, ~~[or]~~ GED, or home school diploma.

(2) The student applicant 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, otherwise known as Level 4, verified by testing as necessary;~~

(b) [~~Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification; [and]~~

(b) Pass a criminal background check through the Kentucky Administrative Office of the Courts (AOC) meeting the requirements of KRS 311A.050;

(c) Pass a drug test using criteria established by the EMS Training and Educational Institution (TEI); and

(d) [~~e~~] Meet all additional requirements established by the EMS Training and Educational Institution (TEI) [EMS-TEI].

Section 2. Certification Requirements. (1) Individuals desiring initial certification as an Emergency Medical Responder [first responder] shall:

(a) [~~Meet all of the requirements of Section 1 of this~~

administrative regulation;

(b) Be at least sixteen (16) years of age;]

(c) ~~Be currently enrolled as a student in grades 9-12 with a minimum GPA of 2.0 or hold a high school diploma or GED;~~

(d) [~~b~~] Successfully complete a board approved training program which conforms to the United States Department of Transportation, National Highway Traffic Safety Administration, National Emergency Medical Services Educational Standards-Instructional Guidelines for the Emergency Medical Responder; [1995 National Standard Curriculum, NREMT-FR as the curriculum for education, which]

1. The educational curriculum shall not be satisfied by the completion of refresher or transition courses alone;

(c) Meet all educational standards established in 202 KAR 7:601;

(d) [~~e~~] Obtain certification [NREMT's registration] as a [n] NREMT-Emergency Medical Responder [NREMT-FR];

(e) [~~f~~] Submit a completed application for EMR Initial in KEMSIS [and signed "First Responder Initial Certification Application"];

(f) [~~g~~] Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(h) Pay the fee required for certification pursuant to [by] 202 KAR 7:030; [and

(i) Present written evidence of completion of current training in CPR that:

1. Shall be taught by an individual who holds instructor certification at an appropriate level from:

a. The American Red Cross;

b. The AHA;

c. The National Safety Council;

d. The ASHI; or

e. Another board approved organization; [and

2. Shall provide instruction and testing in:

a. One (1) rescuer CPR;

b. Two (2) rescuer CPR;

c. Techniques of changing from one (1) to two (2) rescuers during the performance of CPR;

d. Techniques of changing rescuers during the performance of two (2) rescuer CPR;

e. Techniques for relief of obstruction of the airway;

f. CPR of infants and small children;

g. ~~Barrier-to-mouth, barrier-to-nose, or barrier-to-stoma resuscitation for adults, small children, and infants;~~

h. Use of oral and nasal airways;

i. Use of bag-valve-mask or other ventilation device;

j. Use of supplemental oxygen; and

k. Use and operation of an AED.

(2) ~~An applicant for certification as a first responder shall successfully complete all NREMT testing and become Kentucky certified within two (2) years after the completion date of the first responder course.]~~

(g) Undergo a background check pursuant to KRS 311A.050 and 311A.100; and

1. The background check required shall be:

a. National in scope for an applicant not currently certified at any level in Kentucky;

b. Statewide in scope for an applicant with current certification in Kentucky;

c. Less than six (6) months old when the applicant submits to the board all requirements for certification; and

d. Provided by a vendor that has been contracted through the board.

2. The applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check;

(h) Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

1. A social security card;

2. Birth certificate;

3. A United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card); or

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4. Other legal authorization to live and work in the United States.

Section 3. Renewal of Certification [Recertification] and Continuing Education Requirements. (1) An Emergency Medical Responder [first responder] shall be eligible for certification renewal [recertification] if:

(a) The applicant submits a [signed and] completed [“Universal”] Application for EMR Renewal in KEMSIS [Recertification/Relicensure];

(b) The applicant maintains written evidence of: [current completion of training in CPR meeting the requirements as outlined in Section 2 of this administrative regulation;]

1. Completion of a cardiopulmonary resuscitation (CPR) course that:

a. Meets all standards of the American Heart Association (AHA) Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC); and

b. Includes a psychomotor and a cognitive assessment.

2. Completion of current HIV/AIDS training required by KRS 311A.110;

3. Pediatric Abusive Head Trauma required by KRS 311A.127; and

4. Awareness of Sexual Violence Training required by KRS 311A.120;

(c) [The applicant maintains written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) The applicant pays the fee pursuant to [established in] 202 KAR 7:030; and

(e) The applicant maintains evidence of either:

1. Current certification by the NREMT as an Emergency Medical Responder [Current registration by the NREMT as an NREMT-FR]; or

a. If this option is used the board may request, through a continuing education audit, proof of continuing education to verify compliance with the continuing education requirements of this section.

2. Successful completion of the NREMT Emergency Medical Responder National Continued Competency Program for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601. [Successful completion of continuing education that:

a. Includes seventeen (17) contact hours of continuing education, of which:

(i) One (1) shall be in disaster management or mass casualty incidents; and

(ii) Two (2) may be in HIV/AIDS; and

b. Shall be validated by:

(i) The instructor, medical director, training officer, course coordinator, or provider of the continuing education offering; or

(ii) A medical director, service director, or training officer of the first responder’s ambulance service, first response agency, fire department, or rescue squad.]

(2) An application for certification renewal [recertification] shall be denied if:

(a) Prior to the certification expiration date, the Emergency Medical Responder [first responder] applicant has not met the applicable requirements of [Section 3 of] this section [administrative regulation]; or

(b) The a[A]pplicant has been subjected to disciplinary action that prevents certification renewal [recertification] at the time of application.

(3) A certified Emergency Medical Responder [first responder], in good standing, who is a member of a National Guard or a military reserve unit who is called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 673b, shall be renewed according to KRS 12.355 upon submission of the Military Extension Application [may be given a one (1) year extension following release from active duty to meet the applicable requirements for recertification listed in this Administrative Regulation. The first responder shall submit a written request for this extension within sixty (60) days of release from active duty].

(4) The board [KBEMS] office may audit an Emergency

Medical Responder’s [first responder’s] continuing education and continuing education records. The Emergency Medical Responder shall submit the documentation requested within ten (10) business days of receipt of the board’s request.

(5) The first responder shall maintain documentation of all continuing education for three (3) [four (4)] years from the date of completion.

(6) If documentation of continuing education hours consistent with this administrative regulation are not received by the office of the board within ten (10) business days of receipt of the board’s request, the Emergency Medical Responder certification for the individual shall be summarily revoked and the individual shall reapply for certification through Reinstatement, if eligible.

(7) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

Section 4. Emergency Medical [First] Responder Reciprocity.

(1) An individual who is [person] certified in [another state] a contiguous state to the Commonwealth of Kentucky or [territory of the United States or member of the United States military who is registered] by the NREMT as an NREMT-Emergency Medical Responder [FR] shall be eligible for [direct] reciprocity for [initial] Kentucky certification as an Emergency Medical Responder [a first responder] if the applicant submits [individual]:

(a) A completed EMR Reciprocity Application in KEMSIS [Is at least sixteen (16) years of age]; and

(b) Proof of the applicant’s [Holds current] unrestricted certification [registration] as an[a] NREMT-Emergency Medical Responder or Emergency Medical Responder certification in a contiguous state to the Commonwealth of Kentucky. [FR; and

(c) 1. Is currently enrolled in grades 9-12 with a minimum GPA of 2.0; or

2. Holds a high school diploma or GED.

(2) The individual 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, otherwise known as Level 4, verified by testing as necessary;

(b) Have successfully completed a training program, which utilized the United States Department of Transportation, National Highway Traffic Safety Administration, 1995 National Standard Curriculum, Emergency Medical Technician-First Responder as the curriculum for education if any individual initially certified after January 1, 1986. An earlier edition of the National Standard Curriculum which has been supplemented by the completion of the First Responder Transition Course shall be considered to meet this requirement, which shall not be satisfied by the completion of refresher or transition courses alone;

(c) Submit a completed and signed “First Responder-Initial Certification Application”;

(d) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(e) Present written evidence of completion of current training in CPR that meets the requirements of Section 2(1)(i) of this administrative regulation;

(f) Pay the fee required by 202 KAR 7:030;

(g) Not have been convicted of, entered a guilty plea or Alford plea to a felony offense, or have completed a diversion program for a felony offense; and

(h) Not have been subjected to discipline that would prevent reciprocity at the time of application.]

(2) An applicant shall pay the fee required for reciprocity pursuant to 202 KAR 7:030.

(3) An applicant for Emergency Medical Responder reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check; and

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of certification through reciprocity.

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(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) An Emergency Medical Responder certified pursuant to Section 2 of this administrative regulation shall not perform any procedures or skill on which the Emergency Medical Responder has not been trained. An Emergency Medical Responder who performs a skill for which the Emergency Medical Responder does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) An Emergency Medical Responder certified pursuant to Section 4 of this administrative regulation shall complete the Kentucky supplemental Emergency Medical Responder curricula for the procedures listed in 202 KAR 7:701 prior to beginning work for a licensed agency in Kentucky.

(a) Kentucky supplemental Emergency Medical Responder curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(b) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the Emergency Medical Responder for a minimum of three (3) years. Failure to submit the EMR Supplemental Curriculum Training Verification Report upon request shall result in revocation of the Emergency Medical Responder certification.

(c) If an Emergency Medical Responder certified pursuant to this section fails to supply verification of competency as required by subsection (7) of this section, the Emergency Medical Responder shall be ineligible to apply for and receive Emergency Medical Responder reciprocity certification until the applicant has submitted the EMR Supplemental Curriculum Training Verification Report as required by 202 KAR 7:701, and shall reapply for Reciprocity through the process listed in Section 4 of this administrative regulation.

Section 5. Exemptions from Emergency Medical [First] Responder Administrative Regulations. (1) [The—Kentucky] Certification requirements for an Emergency Medical Responder [a first responder] shall not apply to:

(a) [(+)] United States military personnel or state National Guard or employees of the United States government while providing services on a United States government-owned or operated facility, while engaged in the performance of their official duties under federal law, or while providing assistance in mass casualty or disaster type situation; or

(b) [(2)] An Emergency Medical Responder [first responder] certified in another state or territory of the United States who:

1. [(a)] Comes into Kentucky to transport a patient from another state into Kentucky; or

2. [(b)] Is transporting a patient through the state of Kentucky to an out-of-Kentucky location.

Section 6. Reinstatement of Certification. (1) An Emergency Medical Responder whose certification has lapsed may reinstate their certificate by submitting to the board:

(a) A completed Application for EMR Reinstatement in KEMSIS;

(b) Evidence of previous certification as an Emergency Medical Responder in the Commonwealth of Kentucky;

(c) Proof of current training in:

1. HIV/AIDS training required by KRS 311A.110;

2. Pediatric Abusive Head Trauma as required by KRS 311A.127;

3. Awareness of Sexual Violence Training required by KRS 311A.120;

4. A cardiopulmonary resuscitation (CPR) course that:

a. Meets all standards of the American Heart Association Basic Life Support for Healthcare Provider or Professional Rescuer course; and

b. Includes a psychomotor examination component and a cognitive assessment;

(d) Evidence of successful completion of the NREMT Emergency Medical Responder National Continued Competency

Program for Continuing Education within twelve (12) months preceding their application for reinstatement of Emergency Medical Responder; and

(e) Evidence of current skills by completing and submitting validation of those skills on the Kentucky Emergency Medical Responder Skills Verification Report prior to beginning work for a licensed agency in Kentucky. The verification report shall be completed by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(2) The applicant shall pay fee required for reinstatement pursuant to 202 KAR 7:030.

(3) The applicant shall undergo a national background check provided by a vendor that has been contracted through the board. The applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(a) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of certification;

(4) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute. [

(1) A first responder whose certification has lapsed for a period not exceeding five (5) years, may reinstate their certificate by submitting to the board:

(a) A completed and signed "First Responder Certification Reinstatement Application";

(b) Written evidence of current completion of training in CPR meeting the requirements as outlined in Section 2(1)(i) of this administrative regulation;

(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Payment of the fee established in 202 KAR 7:030;

(e) Evidence of previous certification as a first responder in Kentucky;

(f) Evidence of successful completion of continuing education within twelve (12) months preceding their application for reinstatement that includes seventeen (17) contact hours of continuing education, of which:

1. One (1) shall be in disaster management or mass casualty incidents; and

2. Two (2) may be in HIV/AIDS; and

(g) Evidence of successful completion of the National Standard Curriculum for EMT—First Responder Refresher Course within twelve (12) months preceding their application for reinstatement or continuing education hours that meet the requirements of the curriculum.]

[(2)](5) An applicant ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement. [A first responder, whose certification has lapsed for a period that exceeds five (5) years, may reinstate their certificate by complying with Sections 1 and 2 of this administrative regulation.

(3) An application for reinstatement of certification shall not be considered if:

(a) The applicant is subject to disciplinary action pursuant to KRS Chapter 314A;

(b) The applicant is an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or

(c) The applicant has been subjected to discipline that would prevent reinstatement at the time of application.]

Section 7. Public Notice of Negative Action. (1) The board office shall cause to be published on the board website the name of an Emergency Medical Responder that:

(a) Is fined;

(b) Is placed on probationary status;

(c) Is placed on restricted status;

(d) Is suspended; or

(e) Has had their certification revoked. [The KBEMS office shall cause to be published, in the KBEMS News or similar publication of the board, or otherwise disseminate the name of a

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first responder that is fined, is placed on probationary status, is placed on a restricted status, is suspended, or has had their certification revoked.]

Section 8. Expiration of Certification. (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an Emergency Medical Responders certification lapses or expires, the Emergency Medical Responder shall cease provision of emergency medical services.

(3) An Emergency Medical Responder who has allowed their certification to lapse or expire shall reinstate certification pursuant to Section 6 of this administrative regulation.[Temporary Certificate. (1) KBEMS staff may issue a temporary certificate to an individual who:

- (a) Submits a completed "Application for Temporary Certificate";
- (b) Is at least sixteen (16) years of age;
- (c) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the 9th grade of education, otherwise known as Level 4, verified by testing as necessary;
- (d) Provides proof of being currently certified or licensed in another state or territory of the United States or is currently registered by the NREMT;
- (e) Presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;
- (f) Presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;
- (g) Pays the fee required by 202 KAR 7:030;
- (h) Provides the board with a copy of a statewide criminal background check from their state of residence;
- (i) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and
- (j) Has not been disciplined by or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.

(2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be reissued or renewed.]

Section 9. Scope of Practice. (1) An Emergency Medical Responder shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

(2) If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact pursuant to KRS 39A.050, or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an Emergency Medical Responder certified in another state may perform the skills and procedures approved by the certifying state.

Section 10. Surrender of Certification. (1) An Emergency Medical Responder surrendering certification shall:

- (a) Submit a completed Application for EMR Surrender of Certification in KEMSIS; and
 - (b) Pay the fee pursuant to 202 KAR 7:030.
- (2) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon surrendering their certification.

Section 11. Reporting Requirements. (1) An Emergency Medical Responder shall maintain current demographic information in KEMSIS including:

- (a) Legal name;
 1. Any changes to an Emergency Medical Responder's legal name shall be submitted using the Name Change application in KEMSIS; and
 2. One of the following documents as verification of name change:

- a. Social Security Card;
 - b. Driver's license; or
 - c. Passport;
 - (b) Mailing address;
 - (c) Email address; and
 - (d) Phone number.
- (2) An Emergency Medical Responder that does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 12 [9]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "National Emergency Medical Services Education Standards-Emergency Medical Responder Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077B, January 2009 ["First Responder Initial Certification Application" (June 2003)];
- (b) "EMR Initial Certification Application" in KEMSIS, July 2019 ["Universal Application for Recertification/Relicensure" (June 2003)];
- (c) "EMR Certification Renewal Application" in KEMSIS, July 2019; ["First Responder Certification Reinstatement Application" (June 2003); and]
- (d) "EMR Reciprocity Certification Application" in KEMSIS, July 2019; [The United States Department of Transportation, National Highway Traffic Administration, 1995 National Standard Curriculum, Emergency Medical Technician-First Responder.]
- (e) "EMR Reinstatement Certification Application" in KEMSIS, July 2019;
- (f) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;
- (g) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;
- (h) "EMR Skills Verification Report", July 2019;
- (i) "EMR Supplemental Curriculum Training Verification Report", July 2019;
- (j) "EMR Certification Surrender Application" in KEMSIS, July 2019;
- (k) "National Registry of Emergency Medical Technicians National Continued Competency Program EMR", October 2016;
- (l) "American Heart Association Guidelines for CPR and Emergency Cardiovascular Care", November 2018;
- (m) "National Registry of Emergency Medical Technicians Emergency Medical Responder Psychomotor Examination Users Guide", September 2016;
- (n) "Name Change Application" in KEMSIS, July 2019;
- (o) "Military Extension Application" in KEMSIS, July 2019; and
- (p) "United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card)", July 2019.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505, by appointment, [2545 Lawrenceburg Road, Frankfort, Kentucky 40624,] Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairperson
APPROVED BY AGENCY: February 13, 2020
FILED WITH LRC: June 12, 2020 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2020 at 1:00 p.m. Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the

proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey S. Walther, Legal Counsel, Kentucky Board of Emergency Medical Services, Walther, Gay & Mack, PLC; 163 East Main Street, Suite 200, Lexington, Kentucky 40588, phone (859) 225-4714, fax (859) 225-1493, email: administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey S. Walther

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes standards relating to emergency medical responders.

(b) The necessity of this administrative regulation: KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes standards relating to emergency medical responders. The amendment provides terminology updates such as the categorization change from "First Responder" to "Emergency Medical Responder." Additionally, these amendments are necessary to allow Kentucky Emergency Medical Responders the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020, KRS 311A.025 and KRS 311A.160 by establishing standards relating to emergency medical responders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation will effectively establish the standards relating to emergency medical responders. This administrative regulation will assist Emergency Medical Responders in becoming certified utilizing more simplistic guidelines and processes and provides additional guidance on educational requirements, and will allow the board to provide more effective customer service to applicants for certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines certification application processes for Emergency Medical Responders and provides additional guidance on application processes and responsibilities of the Emergency Medical Responder. Additionally, unnecessary and dated requirements and terminology have been removed.

(b) The necessity of the amendment to this administrative regulation: The amendment provides terminology updates such as the categorization change from "First Responder" to "Emergency Medical Responder." Additionally, these amendments are necessary to allow Kentucky Emergency Medical Responders the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other

administrative regulations have been removed.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020, KRS 311A.025 and KRS 311A.160 by establishing standards relating to emergency medical responders.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes standards relating to emergency medical responders. This administrative regulation amendment streamlines processes for administrative body processing and removes barriers to certification for the Emergency Medical Responder. Streamlined processes allow the administrative body to more effectively and efficiently certify applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff, emergency medical services providers, emergency medical responders, and local governments will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, and staff, emergency medical services providers, emergency medical responders, and local governments shall implement and satisfy the standards and requirements of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants seeking certification as an Emergency Medical Responder will benefit from decreased certification requirements and processing time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding source is necessary 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: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, and staff, emergency medical services providers, emergency medical responders, and local governments will be affected by this

administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes standards relating to emergency medical responders.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(Amendment)

202 KAR 7:301. Emergency Medical Technician[EMT].

RELATES TO: KRS 311A.010, 311A.025, 311A.060, 311A.095, 311A.110, 311A.130, 311A.140, 311A.145, 311A.165

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.110, 311A.140, 311A.165

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians[EMTs]. This administrative regulation establishes requirements for Emergency Medical Technicians[EMTs].

Section 1. Emergency Medical Technician [EMT] Student Eligibility. (1) Individuals shall be eligible to enroll as a student in an Emergency Medical Technician [EMT] education and training program if the applicant:

(a) Is at least seventeen (17) [~~sixteen (16)~~] years of age; and

(b) [~~4-~~] Is currently enrolled in grades 9-12 with a minimum GPA of 2.0; or

(c) [~~2-~~] Holds a high school diploma, [~~or~~] GED, or home school diploma.

(2) The student applicant 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, otherwise known as Level 4, verified by testing as necessary;~~

(b) [~~Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;~~

(b) Pass a criminal background check through the Kentucky Administrative Office of the Courts (AOC) meeting the requirements of KRS 311A.050;

(c) Pass a drug test using criteria established by the EMS Training and Educational Institution (EMS-TEI); and

(d) [~~(e)] Meet all additional requirements established by the EMS Training and Educational Institution (EMS-TEI). [EMS-TEI; and~~

(d) Hold a valid motor vehicle operators license or learners permit from a state or territory in the United States.]

Section 2. Certification Requirements. (1) Individuals desiring initial certification as an Emergency Medical Technician [EMT] shall:

(a) [~~Meet all of the requirements of Section 1 of this administrative regulation;~~

(b) Be at least eighteen (18) years of age;

(c) Hold a high school diploma or GED;

(d) [~~(b) Successfully complete a~~] board approved education and training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration National Emergency Medical Services Educational Standards-Instructional Guidelines for the Emergency Medical Technician; [~~1994 National Standard Curriculum for Emergency Medical Technician-Basic, which~~

(c) The educational curriculum shall not be satisfied by the completion of refresher or transition courses alone;

(d) Meet all educational standards established by 202 KAR 7:601;

(e) Obtain certification [NREMT registration] as an NREMT-Emergency Medical Technician [an NREMT-B];

(f) Submit a completed EMT Initial Certification Application in KEMSIS; [~~and signed "Emergency Medical Technician Initial Certification Application;"~~

(g) [~~Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;~~

(h) Pay the fee required for certification pursuant to [by] 202 KAR 7:030; [~~and~~

(i) Present written evidence of completion of current training in CPR that:

1. Shall be taught by an individual who holds instructor certification at an appropriate level from:

a. The American Red Cross;

b. The AHA;

c. The National Safety Council;

d. The ASHI; or

e. Another board approved organization; and

2. Provides instruction and testing in:

a. One (1) rescuer CPR;

b. Two (2) rescuer CPR;

c. Techniques of changing from one (1) to two (2) rescuers during the performance of CPR;

d. Techniques of changing rescuers during the performance of two (2) rescuer CPR;

e. Techniques for relief of obstruction of the airway;

f. CPR of infants and small children;

g. Barrier to mouth, barrier to nose, or barrier to stoma resuscitation for adults, small children, and infants;

h. Use of oral and nasal airways;

i. Use of bag-valve-mask or other ventilation device;

j. Use of supplemental oxygen; and

k. Use and operation of an AED.

(2) An applicant for certification as an EMT shall successfully complete all NREMT testing and become Kentucky certified within two (2) years after the completion date of their EMT course.]

(h) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

1. National in scope for an applicant not currently certified at any level in Kentucky;

2. Statewide in scope for an applicant with current certification in Kentucky;

3. Less than six (6) months old when the applicant submits to the board all requirements for certification; and

4. Provided by a vendor that has been contracted through the board.

a. An applicant shall not directly submit a background check to meet the requirements of this section. The background check

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shall be submitted to the board by the company that conducts the background check; and

(j) Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

1. A social security card;
2. Birth certificate;
3. A United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card); or
4. Other legal authorization to live and work in the United States.

Section 3. Renewal of Certification [Recertification] and Continuing Education Requirements. (1) An Emergency Medical Technician [EMT] shall be eligible for certification renewal [recertification] if:

(a) The applicant submits a completed EMT Certification Renewal Application in KEMSIS [and signed "Universal Application for Recertification/Relicensure"];

(b) The applicant maintains written evidence of: [current completion of training in CPR meeting the requirements as outlined in Section 2(1)(i) of this administrative regulation;]

1. Completion of a cardiopulmonary resuscitation (CPR) course that:

a. Meets all standards of the American Heart Association (AHA) Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC); and

b. Includes a psychomotor and a cognitive assessment;

2. Completion of current HIV/AIDS training required by KRS 311A.110;

3. Pediatric Abusive Head Trauma required by KRS 311A.127; and

4. Awareness of Sexual Violence Training required by KRS 311A.120.

(c) [The applicant maintains written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d)] The applicant pays the fee required for renewal pursuant to [established in] 202 KAR 7:030; and

(d)[(e)] The applicant maintains evidence of either:

1. Current certification [registration] by the NREMT as an Emergency Medical Technician; [NREMT-B; or]

a. If this option is used, the board may request through a continuing education audit proof of continuing education to verify compliance with the continuing education requirements listed in this section of the administrative regulation; or

2. Successful completion of the NREMT Emergency Medical Technician National Continued Competency Program for Continuing Education which shall be validated by: ["EMT Basic Minimum Continuing Education Requirement" that:

a. Includes twenty-four (24) structured contact hours of continuing education, of which sixteen (16) hours shall be within mandatory topic areas and eight (8) hours may be electives to include the following minimum contact hours and topics:

(i) One (1) in disaster management or mass casualty incidents;

(ii) Two (2) in airway management;

(iii) Three (3) in patient assessment;

(iv) Four (4) in medical or behavioral emergencies;

(v) Four (4) in trauma; and

(vi) Two (2) in obstetrics or gynecology, infants and children;

and

b. Shall be validated by:

(i) a. Entities authorized to conduct continuing education pursuant to 202 KAR 7:601. [The instructor, medical director, training officer, course coordinator, or provider of the continuing education offering; or

(ii) A medical director, service director, or training officer of the EMT's ambulance service, first response agency, fire department, rescue squad or other medical employer.]

(2) An application for [renewal of] certification renewal shall be denied if:

(a) Prior to the certification expiration date, the Emergency Medical Technician [EMT] applicant has not met the applicable requirements of this section; or

(b) The applicant has been subjected to disciplinary action that prevents certification renewal [recertification] at the time of application.

(3) A certified Emergency Medical Technician [EMT], in good standing, who is a member of a National Guard or a military reserve unit who [and] is called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 673b, shall be renewed according to KRS 12.355 upon submission of the Military Extension Application. [may be given a one (1) year extension following release from active duty to meet the applicable requirements for recertification listed in this administrative regulation. The EMT shall submit a written request for this extension within sixty (60) days of release from active duty.]

(4) The board [KBEMS] office may audit an Emergency Medical Technician's [EMT's] continuing education and continuing education records. The Emergency Medical Technician shall submit the documentation requested within ten (10) business days of receipt of the board's request.

(5) If documentation of continuing education hours consistent with this administrative regulation are not received by the office of the board within ten (10) business days of receipt of the board's request, the Emergency Medical Technician certification for the individual shall be summarily revoked and the individual shall reapply for certification through Reinstatement if eligible.

(6) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

(7) The Emergency Medical Technician [EMT] shall maintain documentation of all continuing education for three (3) [four] years from the date of completion.

Section 4. Emergency Medical Technician [EMT] Reciprocity.

(1) An individual who is [A person] certified in [another state] a contiguous state to the Commonwealth of Kentucky or [territory of the United States or member of the United States military who is registered] by the NREMT as an Emergency Medical Technician [NREMT-B] shall be eligible for [direct] reciprocity for [initial] Kentucky certification as an Emergency Medical Technician if the applicant submits a completed EMT Reciprocity Certification Application in KEMSIS and proof of: [EMT if the individual]

(a) [Is at least eighteen (18) years of age;

(b) The applicant's [Holds current] unrestricted certification [registration] as an NREMT- Emergency Medical Technician or Emergency Medical Technician certification in a contiguous state to the Commonwealth of Kentucky [NREMT-B];

(c) Completes a training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration, 1994 National Standard Curriculum for Emergency Medical Technician-Basic, which shall not be satisfied by the completion of refresher or transition courses alone;

(d) Holds a high school diploma or GED; and

(e) Holds a valid motor vehicle operators license from a state or territory in the United States.

(2) The individual 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, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed and signed "Emergency Medical Technician Initial Certification Application";

(c) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Present written evidence of completion of current training in CPR that meets the requirements of Section 2(1) (i) of this administrative regulation;

(e) (2) An applicant shall pay the fee required for certification through reciprocity pursuant to [by] 202 KAR 7:030. [;

(f) Not have been convicted of, entered a guilty plea or Alford plea to a felony offense, or have completed a diversion program for a felony offense;]

(3) An applicant for Emergency Medical Technician reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check

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to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check; and

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of certification through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

~~[(g)]~~ (5) An applicant shall ~~n[ot]~~ have been subjected to discipline that would prevent reciprocity at the time of application; ~~and~~

(6) An Emergency Medical Technician certified pursuant to Section 2 of this administrative regulation shall not perform any procedures or skill on which the Emergency Medical Technician has not been trained. An Emergency Medical Technician who performs a skill for which the Emergency Medical Technician does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) An Emergency Medical Technician certified pursuant to Section 4 of this administrative regulation shall complete the Kentucky supplemental Emergency Medical Technician curricula for the procedures listed in 202 KAR 7:701 prior to beginning work for a licensed agency in Kentucky.

(a) Kentucky supplemental Emergency Medical Technician curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(b) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the Emergency Medical Technician for a minimum of three (3) years. Failure to submit the EMT Supplemental Curriculum Training Verification Report upon request shall result in revocation of the Emergency Medical Technician certification.

(c) If an Emergency Medical Technician certified pursuant to this section fails to supply verification of competency as required by subsection (7) of this section, the Emergency Medical Technician shall be ineligible to apply for and receive Emergency Medical Technician reciprocity certification until the applicant has submitted the EMT Supplemental Curriculum Training Verification Report as required by 202 KAR 7:701, and shall reapply for Reciprocity through the process listed in Section 4 of this administrative regulation;]

~~(h) Have successfully completed a training program, which utilized the United States Department of Transportation, National Highway Traffic Safety Administration, 1994 National Standard Curriculum, Emergency Medical Technician-Basic as the curriculum for education if any individual initially certified after January 1, 1986. An earlier edition of the National Standard Curriculum which has been supplemented by the completion of the EMT-Basic transition course shall be considered to meet this requirement;]~~

Section 5. Exemptions from Emergency Medical Technician [EMT] Administrative Regulations. Certification requirements for an Emergency Medical Technician [EMT] shall not apply to:

(1) United States military personnel or state National Guard or employees of the United States government while providing services on a United States government owned or operated facility, while engaged in the performance of their official duties under federal law, or while providing assistance in mass casualty or disaster type situation; or

(2) An Emergency Medical Technician [EMT] certified in another state or territory of the United States who:

(a) Comes into Kentucky to transport a patient from another state into Kentucky; or

(b) Is transporting a patient through the state of Kentucky to an out-of-Kentucky location.

Section 6. Reinstatement of Certification. (1) An Emergency Medical Technician [EMT] whose certification has lapsed ~~[for a period not exceeding five (5) years,]~~ may reinstate their certificate by submitting to the board:

(a) A completed EMT Reinstatement Certification Application

in KEMSIS ~~[and signed "Emergency Medical Technician Certification Reinstatement Application"];~~

(b) Evidence of previous certification as an Emergency Medical Technician in the Commonwealth of Kentucky; and

(c) Current training in:

1. HIV/AIDS training required by KRS 311A.110;

2. Pediatric Abusive Head Trauma as required by KRS 311A.127;

3. Awareness of Sexual Violence Training required by KRS 311A.120; and a

4. Cardiopulmonary resuscitation (CPR) course that:

a. Meets all standards of the American Heart Association (AHA) Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC); and

b. Includes a psychomotor and a cognitive assessment.]

~~(b) Written evidence of current completion of training in CPR meeting the requirements as outlined in Section 2(1) (i) of this administrative regulation;~~

~~(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110;]~~

(d) Payment of the fee pursuant to ~~[established in]~~ 202 KAR 7:030;

(e) The applicant for reinstatement of certification shall undergo a national background check provided by a vendor that has been contracted through the board.

1. An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check; and

2. Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of certification. ~~[Evidence of previous certification as an EMT in Kentucky;]~~

(f) Evidence of ~~[additional]~~ successful completion of the NREMT Emergency Medical Technician National Continued Competency Program for Continuing Education within twelve (12) months preceding their application for reinstatement of the Emergency Medical Technician. ~~["EMT Basic Minimum Continuing Education Requirement" that includes twenty-four (24) structured contact hours of continuing education, of which sixteen (16) hours shall be within mandatory topic areas and eight (8) hours may be electives to include the following minimum contact hours and topics:~~

1. One (1) in disaster management or mass casualty incidents;

2. Two (2) in airway management;

3. Three (3) in patient assessment;

4. Four (4) in medical or behavioral emergencies;

5. Four (4) in trauma; and

6. Two (2) in obstetrics or gynecology, infants and children;]

(g) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute; ~~[Evidence of successful completion of the National Standard Curriculum for Emergency Medical Technician Refresher Course or continuing education hours that meet the requirements of the Curriculum;]~~ and

(h) An applicant for reinstatement of a lapsed certification shall provide evidence of current skills by completing and submitting validation of those skills on the Kentucky Emergency Medical Technician Skills Verification Report. The verification report shall be completed by entities authorized to conduct continuing education pursuant to 202 KAR 7:601. [Evidence of validation of skills maintenance by completing the "EMT Recertification Report".]

(2) ~~[An EMT, whose certification has lapsed for a period that exceeds five (5) years, may reinstate their certificate by complying with Sections 1 and 2 of this administrative regulation.~~

~~(3) An applicant ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement. [An application for reinstatement of certification shall not be considered if:~~

~~(a) The applicant is subject to disciplinary action pursuant to~~

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KRS Chapter 311A;

- (b) The applicant is an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or
- (c) The applicant has been subjected to discipline that would prevent reinstatement at the time of application.]

Section 7. Public Notice of Negative Action. (1) The board [KBEMS] office shall cause to be published[,] on the board Web site [in the KBEMS News or similar publication of the board, or otherwise disseminate] the name of an Emergency Medical Technician [EMT] that:

- (a) Is fined;
- (b) Is placed on probationary status;
- (c) Is placed on restricted status;
- (d) Is suspended; or
- (e) Has had their certification revoked.[is fined, is placed on probationary status, is placed on a restricted status, is suspended, or has had their certification revoked.]

Section 8. Expiration of Certification. (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an Emergency Medical Technician's certification lapses or expires, the Emergency Medical Technician shall cease provision of emergency medical services.

(3) An Emergency Medical Technician who has allowed their certification to lapse or expire shall be required to reinstate certification pursuant to Section 6 of this administrative regulation. [Temporary Certificate. (1) KBEMS staff may issue a temporary certificate to an individual who:

- (a) Submits a completed "Application for Temporary Certificate";
 - (b) Is at least eighteen (18) years of age;
 - (c) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the 9th grade of education, otherwise known as Level 4, verified by testing as necessary;
 - (d) Provides proof of being currently certified or licensed in another state or territory of the United States or is currently registered by the NREMT;
 - (e) Presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;
 - (f) Presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;
 - (g) Pays the fee required by 202 KAR 7:030;
 - (h) Provides the board with a copy of a statewide criminal background check from their state of residence;
 - (i) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and
 - (j) Has not been disciplined by or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.
- (2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be reissued.]

Section 9. Scope of Practice. (1) An Emergency Medical Technician shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

(2) If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact, pursuant to KRS 39A.050, or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an Emergency Medical Technician certified in another state may perform the skills and procedures approved by the certifying state.

Section 10. Downgrading Certification. (1) An Emergency Medical Technician currently certified as an Emergency Medical

Technician by the board shall be eligible for certification downgrade if:

- (a) The certification is in good standing with no pending disciplinary action;
 - (b) The applicant submits a completed EMT Certification Downgrade Application in KEMSIS; and
 - (c) The applicant pays the fee pursuant to 202 KAR 7:030;
- (2) An Emergency Medical Technician shall only be eligible to downgrade their certification to an Emergency Medical Responder certification.
- (3) Certification periods and expiration dates shall be pursuant to KRS 311A.095.
 - (4) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:
 - (a) Statewide in scope for an applicant with current certification in Kentucky;
 - (b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and
 - (c) Provided by a vendor that has been contracted through the board.
 - (5) The applicant provides proof of:
 - (a) Current certification by the NREMT as an Emergency Medical Technician; or
 - (b) Successful completion of the NREMT Emergency Medical Technician National Continued Competency Program for Continuing Education which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.
 - (c) Completion of a cardiopulmonary resuscitation (CPR) course that:
 - 1. Meets all standards of the American Heart Association (AHA) Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC); and
 - 2. Includes a psychomotor and a cognitive assessment.
 - (d) Completion of current HIV/AIDS training required by KRS 311A.110;
 - (e) Pediatric Abusive Head Trauma required by KRS 311A.127; and
 - (f) Awareness of Sexual Violence Training required by KRS 311A.120.
 - (6) Downgrade shall be denied if the applicant has not met the requirements of this section or has been subject to disciplinary action that prevents certification at the time of application.
 - (7) The applicant shall be responsible for meeting the renewal requirements of the downgraded certification level issued prior to expiration of that certification.
 - (8) To reinstate the certification or license that was previously held, the applicant shall meet the regulatory requirements for that level of certification or licensure.
 - (9) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon downgrading their certification.
 - (10) Once the applicant has downgraded their certification or license, the applicant shall no longer be permitted to provide emergency medical services at the previous certification or license level held.
 - (11) An applicant applying for downgrade that does not comply with this section of the administrative regulation shall be subject to disciplinary action pursuant to KRS Chapter 311A.
 - (12) All endorsements, certifications, or licenses held at the previous certification or license level shall be void at the completion of the downgrade.

Section 11. Surrender of Certification. (1) An Emergency Medical Technician surrendering certification shall:

- (a) Submit a completed EMT Certification Surrender Application in KEMSIS; and
 - (b) Pay the fee pursuant to 202 KAR 7:030.
- (2) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon surrendering their certification.

Section 12. Reporting Requirements. (1) An Emergency Medical Technician shall maintain current demographic

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information in KEMSIS including:

(a) Legal name:

1. Any changes to your legal name shall be submitted using the Name Change application in KEMSIS; and

2. One of the following documents as verification of name change:

a. Social Security Card;

b. Driver's license; or

c. Passport;

(b) Mailing address;

(c) Email address; and

(d) Phone number.

(2) An Emergency Medical Technician that does not comply with this section of this administrative regulation shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Emergency Medical Technician Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077C, January 2009; [The United States Department of Transportation, National Highway Traffic Safety Administration, "1994 National Standard Curriculum, Emergency Medical Technician" (1994 Edition);]

(b) "EMT Initial Certification Application" in KEMSIS, July 2019; [The "Emergency Medical Technician Initial Certification Application" (June 2003);]

(c) "EMT Certification Renewal Application" in KEMSIS, July 2019; [The "Universal Application Recertification/Relicensure" (June 2003);]

(d) "EMT Reciprocity Certification Application" in KEMSIS July 2019;]

(e) "The Kentucky Board of Emergency Medical Services Emergency Medical Technician Minimum Continuing Education Requirements, Total Contact Hours" (June 2003); and]

(f) "EMT Reinstatement Certification Application" in KEMSIS, July 2019; [The "Emergency Medical Technician Reinstatement Application" (June 2003).]

(g) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(h) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;

(i) "EMT Skills Verification Report", July 2019;

(j) "EMT Supplemental Curriculum Training Verification Report", July 2019;

(k) "EMT Certification Downgrade Application" in KEMSIS, July 2019;

(l) "EMT Certification Surrender Application" in KEMSIS, July 2019;

(m) "National Registry of Emergency Medical Technicians National Continued Competency Program EMT", October 2016;

(n) "American Heart Association Guidelines for CPR and Emergency Cardiovascular Care", November 2018;

(o) "National Registry of Emergency Medical Technicians Emergency Medical Technician Psychomotor Examination Users Guide", September 2016;

(p) "Name Change Application" in KEMSIS, July 2019;

(q) "Military Extension Application" in KEMSIS, July 2019; and

(r) "United States Citizenship and Immigration Services (U.S.C.I.S) Permanent Resident Card (form I-551/Green Card)", July 2019.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505, by appointment, [2545 Lawrenceburg Road, Frankfort, Kentucky 40601,] Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: February 13, 2020

FILED WITH LRC: June 12, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2020 at 1:00 p.m. Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey S. Walther, Legal Counsel, Kentucky Board of Emergency Medical Services, Walther, Gay & Mack, PLC; 163 East Main Street, Suite 200, Lexington, Kentucky 40588, phone (859) 225-4714, fax (859) 225-1493, email: administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey S. Walther

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians.

(b) The necessity of this administrative regulation: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians. These amendments are necessary to allow Kentucky Emergency Medical Technicians the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025 by establishing requirements for Emergency Medical Technicians

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians. This administrative regulation will assist Emergency Medical Technicians in becoming certified utilizing more simplistic guidelines and processes and provides additional guidance on educational requirements, and will allow the board to provide more effective customer service to applicants for certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines certification application processes for Emergency Medical Technicians and provides additional guidance on application processes and responsibilities of the Emergency Medical Technician. Additionally, unnecessary and dated requirements and terminology have been removed.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow Kentucky Emergency Medical Technicians the opportunity to become certified and maintain certification to protect the citizens of the

Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311A.025 by establishing requirements for Emergency Medical Technicians.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians. This amendment streamlines processes for administrative body processing and removes barriers to certification for the Emergency Medical Technician. Streamlined processes allow the board to certify applicants more effectively and efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, and Emergency Medical Technicians will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies shall implement the standards relating to Emergency Medical Technicians pursuant to this administrative regulation and shall execute their duties consistent with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants seeking certification as an Emergency Medical Technician will benefit from decreased certification requirements and processing time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding source is necessary 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: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, and Emergency Medical Technicians will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(Amendment)**

**202 KAR 7:330. Advanced Emergency Medical Technician
~~[Requirements for examination, certification, and recertification of the advanced emergency medical technician].~~**

RELATES TO: KRS 38.030, KRS Chapter 39, 39A.050, 311A.010, 311A.020, 311A.025, 311A.050, KRS 311A.090, 311A.095, 311A.100, 311A.110, 311A.127, 311A.140, 311A.145, 311A.150, 311A.195, 10 U.S.C. §§ 121, 672(b)

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technician.

Section 1. Advanced Emergency Medical Technician Student Eligibility. (1) Individuals shall be eligible to enroll as a student in an Advanced Emergency Medical Technician education and training program if the applicant:

(a) Is at least eighteen (18) years of age;

(b) Holds a high school diploma, GED, or home school diploma; and

(c) Is currently certified at a minimum of an Emergency Medical Technician by the board or the NREMT.

(2) The student applicant shall:

(a) Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification; and

(b) Meet all additional requirements established by the EMS Training and Educational Institution (EMS-TEI).

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Section 2 [4]. Certification Requirements. (1) Individuals desiring initial certification as an Advanced Emergency Medical Technician shall: [An applicant for initial certification as an AEMT shall complete an educational course that:]

(a) ~~Successfully complete a board approved education and training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration National Emergency Medical Services Educational Standards-Instructional Guidelines for the Advanced Emergency Medical Technician. The educational curriculum shall not be satisfied by the completion of refresher or transition courses alone; [Meets or exceeds the National Emergency Medical Services Educational Standards-Instructional Guidelines for an AEMT; and]~~

(b) ~~Meet[Meets] all educational standards established in 202 KAR 7:601.[.]~~

(c) ~~Obtain certification as an NREMT-Advanced Emergency Medical Technician;~~

(d) ~~Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:~~

- 1. ~~A Social Security card;~~
- 2. ~~Birth certificate;~~
- 3. ~~A United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card); or~~
- 4. ~~Other legal authorization to live and work in the United States.~~

(e) ~~Submit a completed AEMT Initial Certification Application in KEMSIS; and~~

(f) ~~Pay the fee pursuant to 202 KAR 7:030 for certification as an Advanced Emergency Medical Technician.]~~

(2) ~~An applicant for initial certification as an AEMT in Kentucky shall pass the examination required to obtain the National Registry of Emergency Medical Technicians certification for an AEMT.~~

(3) ~~An applicant for initial certification as an AEMT shall provide proof that the applicant has:~~

- (a) ~~Completed a college degree; or~~
- (b) ~~1. Obtained a high school diploma; or~~
- 2. ~~Successfully taken the General Educational Development (GED) test.~~

(4) ~~An applicant for AEMT shall complete and submit a signed EMS Responder Application.~~

(5) ~~An applicant for AEMT shall submit valid evidence of completion of the following courses:~~

- (a) ~~HIV/AIDS training required by KRS 311A.110; and~~
- (b) ~~Pediatric Abusive Head Trauma required by KRS 311A.127.~~

(6) ~~An applicant for AEMT shall pay to KBEMS the fee established in 202 KAR 7:030 for certification as an AEMT.~~

(7) ~~An applicant for AEMT shall submit to KBEMS an unexpired cardiopulmonary resuscitation (CPR) card or other current evidence of completion of a CPR course that:~~

- (a) ~~Meets all standards of the American Heart Association Basic Life Support for Healthcare Provider course; and~~
- (b) ~~Includes a psychomotor examination component and a cognitive assessment.~~

(8) (2) ~~An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check required shall be:~~

- (a) ~~National in scope for an applicant not currently certified at any level in Kentucky;~~
- (b) ~~Statewide in scope for an applicant with current certification in Kentucky;~~
- (c) ~~Less than six (6) months old when the applicant submits to the board [KBEMS] all requirements for certification; and~~
- (d) ~~Provided by a vendor that has been contracted through the board [KBEMS or an official federal entity].~~

(9) [(9)] ~~An applicant shall not directly submit a background check. The background check shall be submitted to the board [Kentucky Board of Emergency Medical Services] by the company [or federal entity] that conducts the background check.[]~~

(10) ~~An applicant shall have two (2) years from the completion date appearing on the course completion form for the~~

applicant's AEMT course to:

- (a) ~~Pass the National Registry exam for AEMT certification; and~~
- (b) ~~Fulfill all requirements for certification as an AEMT established in this section.]~~

Section 3 [2]. Scope of Practice. (1) An Advanced Emergency Medical Technician [AEMT] shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

(2) ~~[In addition to the skills and procedures in the National EMS Scope of Practice Model, the scope of practice of a Kentucky AEMT shall include the following procedures:~~

- (a) ~~Quantitative and qualitative capnography and capnometry;~~
- (b) ~~Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure (BIPAP/CPAP) devices;~~
- (c) ~~End tidal Carbon Dioxide (ETCO2) Detection;~~
- (d) ~~Acquisition of a non-interpretive twelve (12) lead electrocardiogram (ECG);~~
- (e) ~~Transmission of a non-interpretive twelve (12) lead electrocardiogram (ECG); and~~
- (f) ~~Establish and maintain adult intraosseous infusion.~~

(3) ~~Eligibility to perform the supplemental procedures shall require an AEMT to complete education on and training for the skill performed. The supplemental curriculum required shall consist of:~~

- (a) ~~Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device— Application of 12 lead electrocardiogram electrodes and monitor;~~
- (b) ~~Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device— Application and interpretation of quantitative capnography and end tidal carbon dioxide monitoring;~~
- (c) ~~Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure Devices; and~~
- (d) ~~Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using intraosseous infusion in the adult.~~

(4) ~~An AEMT shall adhere to the protocols the employing service's medical director submitted to KBEMS for approval. Deviation from the protocols shall only occur if:~~

- (a) ~~The AEMT's medical director or designated on-line medical control orders otherwise;~~
- (b) ~~Compliance with approved protocols is not in the patient's medical best interest; or~~
- (c) ~~The AEMT does not have the equipment or medication to adhere to the protocol.~~
- (5) ~~An AEMT shall document deviation from an approved protocol as part of the patient care report.~~
- (6) ~~If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact[.] pursuant to KRS 39A.050, or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an Advanced Emergency Medical Technician [AEMT] certified in another state may perform the skills and procedures approved by the certifying state.~~

Section 4 [3]. Expiration of Certification. (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an Advanced Emergency Medical Technician's [AEMT's] certification lapses or expires, the Advanced Emergency Medical Technician [AEMT] shall cease provision of emergency medical services.

(3) ~~[If the AEMT has chosen to maintain certification at the EMT level, the AEMT shall apply for renewal of EMT certification prior to the expiration date.~~

(4) An Advanced Emergency Medical Technician [AEMT] who has allowed his [all levels of] certification to lapse or expire shall be required to reinstate certification pursuant to Section 8 [7] of this administrative regulation.

Section 5 [4]. Renewal of Certification and Continuing Education Requirements. (1) To be eligible for renewal of certification, an Advanced Emergency Medical Technician [AEMT]

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shall submit to the board:

(a) A completed AEMT Certification Renewal Application in KEMSIS [and signed EMS Responder Application]; and

(b) The fee pursuant to [established in] 202 KAR 7:030.

(2) The applicant shall maintain written evidence of:

(a) Current training in HIV/AIDS treatment and recognition required by KRS 311A.110; [Section 1(5) (a) of this administrative regulation; and]

(b) Current training in Pediatric Abusive Head Trauma as required by KRS 311A.127;

(c) Awareness of Sexual Violence Training required by KRS 311A.120; and

(d) Current training in a cardiopulmonary resuscitation (CPR) course that:

1. Meets all standards of the American Heart Association Basic Life Support for Healthcare Provider or Professional Rescuer course; and

2. Includes a psychomotor examination component and a cognitive assessment.

(3) The [An] applicant [for renewal of certification as an AEMT] shall maintain evidence of either:

(a) Current certification by the National Registry of Emergency Medical Technicians as an Advanced Emergency Medical Technician [AEMT]; or

1. If this option is used the board may request, through a continuing education audit, proof of continuing education to verify compliance with the continuing education requirements of this section.

(b) Successful completion of the NREMT Advanced Emergency Medical Technician National Continued Competency Program for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601. [AEMT continuing education requirement of forty-eight (48) total instructional hours. The forty-eight (48) instructional hours shall be composed of twelve (12) elective hours in subject areas chosen by the AEMT and thirty-six (36) hours that include the following minimum contact hours for the following subject areas:

1. Twelve (12) hours in airway, breathing, and cardiology, with a minimum of one (1) hour in each topic;

2. Six (6) hours in medical emergencies, excluding cardiology;

3. Five (5) hours in trauma;

4. Six (6) hours in obstetrics;

5. Six (6) hours in pediatrics; and

6. One (1) hour in disaster management.

(c) The twelve (12) elective hours required for an AEMT to recertify shall not include more than four (4) hours in a single category in the list provided in paragraph (b)1. through 6. of this subsection.

(4) ~~To be used for renewal of certification, the AEMT's continuing education hours shall be certified as valid by:~~

~~(a) The course's instructor, medical director, training officer, coordinator, or provider that offered the hours; or~~

~~(b) A medical director, service director, or training officer of the AEMT's ambulance service, first response agency, fire department, rescue squad, or other medical employer.]~~

~~(4) [(5)] An application [applicant] for [AEMT] shall not be eligible for renewal of certification renewal shall be denied if: [if the applicant does not complete all hours required by the end of the AEMT's certification period.]~~

~~(a) Prior to the certification expiration date, the Advanced Emergency Medical Technician applicant has not met the applicable requirements of this section; or~~

~~(b) The applicant has been subjected to disciplinary action that prevents certification renewal at the time of application.]~~

~~(6) An applicant's certification that is based upon completion of continuing education hours that are subsequently proven untrue, inaccurate, or fraudulent through a board audit shall be invalid pursuant to [KRS 311A.140(4) and] 311A.050(2)(b).]~~

~~(5) [(7)] An applicant who is subject to pending administrative action pursuant to KRS 311A.050 through 311A.090 shall be eligible to renew certification unless the applicant:~~

~~(a) Is temporarily suspended pursuant to KRS 311A.075;~~

~~(b) Has failed to perform an action ordered by the board pursuant to KRS 311A.055 or 311A.060; or~~

~~(c) Is delinquent on fines or fees owed to the board pursuant to KRS 311A.055, KRS 311A.060, or 202 KAR 7:030.~~

~~(6) [(8)] A certified Advanced Emergency Medical Technician, in good standing, who is a member of a branch of the United States National Guard or a military reserve unit and is called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 673b, shall be renewed in accordance with KRS 12.355 upon submission of the Military Extension Application. [AEMT who is not undergoing disciplinary action with the board and who is a member of a branch of the United States military or a National Guard or military reserve unit shall be eligible for an extension of the time limit to renew certification if the AEMT:~~

~~(a)1. Is called to federal active duty by presidential order pursuant to 10 U.S.C. 121 and 673b during the current certification period; or~~

~~2. Is called to state active duty for an extended period of time by order of the governor pursuant to KRS 38.030;~~

~~(b) Because of the call to active duty, is unable to complete the continuing education hours required for renewal of certification; and~~

~~(c) Submits a written request for an extension within thirty (30) days prior to or sixty (60) days after release from active duty.~~

~~(9) The extension granted pursuant to subsection (8) of this administrative regulation shall not exceed one (1) year beyond the effective date of release from active duty for the AEMT. The AEMT shall be required to provide a DD 214 or other relevant federal documents as proof of the release date.]~~

~~(7) [(10)] The board office may audit an Advanced Emergency Medical Technician's continuing education and continuing education records.~~

~~(8) [If asked by the office of the board to provide the documentation of continuing education hours an AEMT used as a basis for renewal of certification,] The Advanced Emergency Medical Technician [AEMT] shall submit the documentation requested within ten (10) business days of receipt of the board's request. If documentation of continuing education hours consistent with this administrative regulation are not received by the office of the board within ten (10) business days of receipt of the board's request, the Advanced Emergency Medical Technician certification for the individual shall be summarily revoked and the individual shall reapply for certification through Reinstatement if eligible.~~

~~(9) [(11)] The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.~~

~~(10) The Advanced Emergency Medical Technician shall maintain documentation of all continuing education for three (3) years from the date of completion.~~

Section 6[5]. Advanced Emergency Medical Technician [AEMT] Reciprocity. (1) An individual who is certified in a contiguous state to the Commonwealth of Kentucky or by the NREMT as an Advanced Emergency Medical Technician [AEMT] shall be eligible for [direct] reciprocity for [initial] certification as an Advanced Emergency Medical Technician[AEMT] in Kentucky if the applicant submits;

(a) A [a] completed AEMT Reciprocity Certification Application in KEMSIS; and [and signed EMS Responder Application and proof of:]

(b) [(a)] Proof of the applicant's unrestricted NREMT certification as an Advanced Emergency Medical Technician or Advanced Emergency Medical Technician certification in a contiguous state to the Commonwealth of Kentucky. [AEMT; and

(b) Completion of current training in:

1. HIV/AIDS training required by KRS 311A.110;

2. Pediatric Abusive Head Trauma training required by KRS 311A.127; and]

3. CPR that meets the requirements of Section 1(7) of this administrative regulation; and

(c) Submission of the Kentucky Required Mandatory Supplemental Curriculum for AEMT Initial Training Verification Report.]

(2) An applicant shall pay the fee required for [initial]

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certification through reciprocity pursuant to 202 KAR 7:030.

(3) An applicant for Advanced Emergency Medical Technician [AEMT direct] reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board. An applicant shall not directly submit a background check. The background check shall be submitted to the board by the company that conducts the background check. [and have the results submitted to the board.] Background checks that are older than six (6) months shall not be considered current, and the applicant shall [be required to] undergo another national background check prior to approval of certification through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) [(4)] An Advanced Emergency Medical Technician [AEMT] certified pursuant to Section 2 [4] of this administrative regulation shall not perform any procedures or skill on which the Advanced Emergency Medical Technician [AEMT] has not been trained. An Advanced Emergency Medical Technician [AEMT] who performs a skill for which the Advanced Emergency Medical Technician [AEMT] does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050[60].

(7) [(5)] An Advanced Emergency Medical Technician [AEMT] certified pursuant to Section 6 [4] of this administrative regulation shall complete the Kentucky supplemental Advanced Emergency Medical Technician [AEMT] curricula for the procedures listed in 202 KAR 7:701 prior to beginning work for a licensed agency in Kentucky [Section 2(3) of this administrative regulation within six (6) months of receiving certification through direct reciprocity].

(8) Kentucky supplemental Advanced Emergency Medical Technician curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(9) [(6)] Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 [Section 2(3) of this administrative regulation] shall be maintained by the Advanced Emergency Medical Technician for a minimum of three (3) years. [submitted to the board within six (6) months of receiving certification.] Failure to submit the AEMT Supplemental Curriculum Training Verification Report [verification] shall result in revocation of Advanced Emergency Medical Technician [AEMT] certification [and the board shall issue a new certificate at the level of EMT for the remaining certification period].

(10) [(7)] If an Advanced Emergency Medical Technician [AEMT] certified pursuant to this section fails to supply verification of competency as required by subsection (7)[(6)] of this section the Advanced Emergency Medical Technician shall be ineligible to apply for and receive Advanced Emergency Medical Technician reciprocity certification until the applicant has submitted the AEMT Supplemental Curriculum Training Verification Report as required pursuant to 202 KAR 7:701, and shall reapply for Reciprocity through the process set forth in this section, [and the AEMT's certificate is reissued at the EMT level of certification, the AEMT shall be ineligible to apply for and receive AEMT reciprocity certification until the applicant has submitted verification of competency in the supplemental procedures in Section 2(3) of this administrative regulation].

Section 7 [6]. Exemptions from Advanced Emergency Medical Technician [AEMT] Administrative Regulations. Certification requirements for an Advanced Emergency Medical Technician [AEMT] shall not apply to:

(1) United States military members, state National Guard personnel, or employees of the United States government if the individual provides emergency medical services:

(a) [1-] On land owned by the United States government; [or]

(b) [2-] In facilities owned by the United States government; [or]

(c) [(b)1-] In the performance of official duties under federal law; [or]

(d) [2-] As part of assistance for a mass casualty or disaster

incident pursuant to federal law or official state assistance request; or

(2) An Advanced Emergency Medical Technician [AEMT] certified in another state or territory of the United States who:

(a) Enters Kentucky with a patient being transported to a medical facility or other final destination in Kentucky; or

(b) Travels through Kentucky during the course of a patient transport from an out-of-state location to a destination outside of Kentucky.

Section (8) [7]. Reinstatement of Certification. (1) An Advanced Emergency Medical Technician [AEMT] whose Kentucky certification has lapsed shall be eligible for reinstatement of certification if the applicant submits:

(a) [The lapse in certification has not exceeded a period of three (3) years; and

(b) The applicant submits:

1-] A completed AEMT Reinstatement Certification Application in KEMSIS [and signed EMS Responder Application]; and

[2-] (b) Evidence of:

1. Previous certification as an Advanced Emergency Medical Technician in the Commonwealth of Kentucky; and [a Current certification at the AEMT level or higher with the National Registry; or]

2. [b-] Current training in:

a. [(i)] HIV/AIDS training required by KRS 311A.110;

b. [(ii)] Pediatric Abusive Head Trauma as required by KRS 311A.127; [and

—[(iii)] Healthcare CPR as required by Section 1(7) of this administrative regulation.]

c. Awareness of Sexual Violence Training required by KRS 311A.120; and a

d. Cardiopulmonary resuscitation (CPR) course that:

(i) Meets all standards of the American Heart Association Basic Life Support for Healthcare Provider or Professional Rescuer course; and

(ii) Includes a psychomotor examination component and a cognitive assessment.

(2) The applicant shall pay the fee pursuant to 202 KAR 7:030.

(3) The applicant for reinstatement of certification shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check; and

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of certification. [The applicant shall undergo a national background check and have the results presented to the office of the board. If the background check is older than six (6) months, the applicant shall be required to undergo and have new results submitted to the board.]

(4) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.

(5) An applicant for reinstatement of an Advanced Emergency Medical Technician [AEMT] certification shall submit evidence of formal completion of continuing education hours as required in Section 5 [4] of this administrative regulation. Completion of the hours shall have occurred within the twelve (12) months preceding application for reinstatement of the Advanced Emergency Medical Technician [AEMT].

(6) An applicant for reinstatement of a lapsed certification shall provide evidence of current skills by completing and submitting validation of those skills on the Kentucky Advanced Emergency Medical Technician [EMT] Skills Verification Report. The Advanced Emergency Medical Technician Skills Verification Report shall be completed by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(7) [An AEMT whose certification has lapsed for longer than

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three (3) years shall not be eligible for reinstatement but shall be considered an initial certification and shall meet all requirements in Section 4 of this administrative regulation.

(8)] An applicant ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 9. Downgrading Certification. (1) An Advanced Emergency Medical Technician currently certified as an Advanced Emergency Medical Technician by the board shall be eligible for certification downgrade if:

(a) The certification is in good standing with no pending disciplinary action;

(b) The applicant submits a completed AEMT Certification Downgrade Application in KEMSIS;

(c) The applicant pays the fee established in 202 KAR 7:030;

(2) An Advanced Emergency Medical Technician is only eligible to downgrade their certification to an Emergency Medical Technician or Emergency Medical Responder certification.

(3) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(4) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check required shall be:

(a) Statewide in scope for an applicant with current certification in Kentucky;

(b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and

(c) Provided by a vendor that has been contracted through the board.

(5) The applicant shall provide proof of:

(a) Current certification by the NREMT as an Advanced Emergency Medical Technician; or

(b) Successful completion of the NREMT Emergency Medical Technician National Continued Competency Program for Continuing Education which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(c) Completion of a cardiopulmonary resuscitation (CPR) course that:

1. Meets all standards of the American Heart Association (AHA) Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC); and

2. Includes a psychomotor and a cognitive assessment.

(d) Completion of current HIV/AIDS training required by KRS 311A.110;

(e) Pediatric Abusive Head Trauma required by KRS 311A.127; and

(f) Awareness of Sexual Violence Training required by KRS 311A.120.

(6) Downgrade shall be denied if the applicant has not met the requirements of this section or has been subject to disciplinary action that prevents certification at the time of application.

(7) The applicant shall be responsible for meeting the renewal requirements of the downgraded certification level issued prior to expiration of that certification.

(8) To reinstate the certification or license that was previously held, the applicant shall meet the regulatory requirements for that level of certification or licensure.

(9) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon downgrading their certification.

(10) Once the applicant has downgraded their certification or license, the applicant is no longer permitted to provide emergency medical services at the previous certification or license level held.

(11) An applicant applying for downgrade that does not comply with this section of the administrative regulation shall be subject to disciplinary action pursuant to KRS Chapter 311A.

(12) All endorsements, certifications, or licenses held at the previous certification or license level shall be void at the completion of the downgrade.

Section 10. Surrender of Certification. (1) An Advanced Emergency Medical Technician surrendering certification shall:

(a) Submit a completed AEMT Certification Surrender

Application in KEMSIS; and

(b) Pay the fee established in 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon surrendering their certification.

Section 10. Reporting Requirements. (1) An Advanced Emergency Medical Technician shall maintain current demographic information in KEMSIS including:

(a) Legal name;

1. Any changes to your legal name shall be submitted using the Name Change application in KEMSIS; and

2. One of the following documents as verification of name change:

a. Social Security card;

b. Driver's license; or

c. Passport;

(b) Mailing address;

(c) Email address; and

(d) Phone number.

(2) An Advanced Emergency Medical Technician that does not comply with this section of this administrative regulation shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 11. Public Notice of Negative Action. (1) The board office shall cause to be published on the board website the name of an Advanced Emergency Medical Technician that:

(a) Is fined;

(b) Is placed on probationary status;

(c) Is placed on restricted status;

(d) Is suspended; or

(e) Has had their certification revoked.

[Section 8. AEMT certification through previous pilot projects.

(1) An AEMT who obtained certification as an AEMT through training in a pilot project previously approved by the board shall maintain certification until the end of the current certification period without the completion of additional requirements.

(2) An AEMT certified through a previously approved pilot project who applies for renewal at the end of the current certification period shall meet all requirements for renewal of certification in Section 4 of this administrative regulation.

(3) An applicant certified as an AEMT in a previously approved pilot project and who meets the requirements for certification as an AEMT in Section 4 of this administrative regulation shall not be limited to the geographic boundaries established in the original pilot project but shall be considered fully certified and geographically unrestricted to practice as an AEMT in the state of Kentucky.

~~Section 9.~~Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Advanced Emergency Medical Technician Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077D, January 2009 [National Highway Traffic Safety Administration, DOT HS 811 077A, January 2009];

(b) "AEMT Initial Certification Application" in KEMSIS, July 2019 ["EMS Responder Application", KBEMS E-1, September 2012];

(c) "AEMT Certification Renewal Application" in KEMSIS, July 2019 ["American Heart Association's Basic Life Support for Healthcare Providers Course", American Heart Association, 2011];

(d) "AEMT Reciprocity Certification Application" in KEMSIS, July 2019 ["National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007];

(e) "AEMT Reinstatement Certification Application" in KEMSIS, July 2019 ["Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device - Application of 12 lead electrocardiogram electrodes and monitor", KBEMS E-29, March 2013];

(f) "AEMT Supplemental Curriculum Training Verification Report", July 2019;

(g) "AEMT Skills Verification Report", July 2019;

(h) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(i) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;

(j) "AEMT Certification Downgrade Application" in KEMSIS, July 2019;

(k) "AEMT Certification Surrender Application" in KEMSIS, July 2019;

(l) "National Registry of Emergency Medical Technicians National Continued Competency Program AEMT", October 2016;

(m) "American Heart Association Guidelines for CPR and Emergency Cardiovascular Care", November 2018;

(n) "National Registry of Emergency Medical Technicians Advanced Emergency Medical Technician Psychomotor Examination Users Guide", September 2016;

(o) "Name Change Application" in KEMSIS, July 2019;

(p) "Military Extension Application" in KEMSIS, July 2019; and

(q) "United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card)", July 2019.["Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device— Application and interpretation of quantitative capnography and end-tidal carbon dioxide monitoring", KBEMS E-30, March 2013;

(g) "Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure Devices", KBEMS E-32, March 2013;

(h) "Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using intraosseous infusion in the adult", KBEMS E-31, March 2013;

(i) "Kentucky Required Mandatory Supplemental Curriculum for AEMT Initial Training Verification Report", KBEMS E-26, March 2013; and

(j) "Kentucky Advanced EMT Skills Verification Report", KBEMS E-28, March 2013.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505, by appointment, [KCTCS, 300 N. Main Street, Versailles, Kentucky 40383] Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: February 13, 2020

FILED WITH LRC: June 12, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2020 at 1:00 p.m. Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey S. Walther, Legal Counsel, Kentucky Board of Emergency Medical Services, Walther, Gay & Mack, PLC; 163 East Main Street, Suite 200, Lexington, Kentucky 40588, phone (859) 225-4714, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.

Contact Person: Jeffrey S. Walther

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technicians.

(b) The necessity of this administrative regulation: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technicians. These amendments are necessary to allow Kentucky Advanced Emergency Medical Technicians the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025 by establishing the requirements for Advanced Emergency Medical Technicians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technician. This administrative regulation will assist Advanced Emergency Medical Technicians in becoming certified utilizing more simplistic guidelines and processes and provides additional guidance on educational requirements and will allow the board to provide more effective customer service to applicants for certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines certification application processes for Advanced Emergency Medical Technicians and provides additional guidance on application processes and responsibilities of the Advanced Emergency Medical Technician. Additionally, unnecessary and dated requirements and terminology have been removed.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow Kentucky Advanced Emergency Medical Technicians the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technician.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced

Emergency Medical Technician. This administrative regulation amendment streamlines processes for administrative body processing and removes barriers to certification for the Advanced Emergency Medical Technician. Streamlined processes allow the administrative body to certify applicants more effectively and efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies shall implement the standards relating to Advanced Emergency Medical Technicians pursuant to this administrative regulation and shall execute their duties consistent with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants seeking certification as an Advanced Emergency Medical Technician will benefit from decreased certification requirements and processing time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding source is necessary 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: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.025 requires the board to promulgate administrative regulations relating to Advanced Emergency Medical Technicians. This administrative regulation establishes requirements for Advanced Emergency Medical Technicians.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE
SYSTEM
Kentucky Board of Emergency Medical Services
(Amendment)**

202 KAR 7:401. Paramedics.

RELATES TO: KRS 311A.025, KRS 311A.030, 311A.080, 311A.110, 311A.135, 311A.170

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.115, 311A.125, 311A.135, 311A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures.

Section 1. Paramedic Student Eligibility. (1) Individuals shall be eligible to enroll as a student in a paramedic education and training program if the applicant:

(a) [(1)] Is at least eighteen (18) years of age;

(b) [(2)] Holds a high school diploma, [or] GED, or home school diploma;

(c) [(3)] Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(4) Holds current unrestricted certification as an Emergency Medical Technician [EMT] in Kentucky or holds current unrestricted certification [registration] with the NREMT as an Emergency Medical Technician [NREMT-B];

(d) [(5)] Is not currently subject to disciplinary action pursuant to KRS Chapter 311A that would prevent licensure; and[.];

(e) [(6)] Meets all additional requirements established by the EMS Training and Educational Institution (EMS-TEI). [EMS-TEI; and

(7) Holds a valid motor vehicle operators license from a state or territory of the United States.]

Section 2. Licensure Requirements. (1) Individuals desiring initial licensure as a paramedic shall:

(a) Successfully complete a board approved education and training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration National Emergency Medical Services Educational Standards-Instructional Guidelines for the Paramedic; [Meet all of the requirements contained in Section 1 of this administrative regulation;]

(b) Successfully complete[. within thirty (30) months of the beginning of the course,] all EMS-Training and Educational

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Institute (EMS-TEI) [FEI] requirements for the education or training program which:

1. Meet or exceed the National Emergency Medical Services Educational Standards- Instructional Guidelines for the Paramedic [Utilize the United States Department of Transportation, National Highway Traffic Safety Administration, 1998 National Standard Curriculum for Emergency Medical Technician-Paramedic], which shall not be satisfied by the completion of refresher or transition courses alone; [and]

2. Meet all educational standards established in 202 KAR 7:601; [Shall not contain less than the median number of didactic, practical laboratory, and clinical and field internship hours for each subject and skill as contained in the "Field and Pilot Test Didactic and Practical Laboratory Hours Report" and "Field and Pilot Test Clinical Report" of the United States Department of Transportation, National Highway Traffic Administration, 1998 National Standard Curriculum for Emergency Medical Technician-Paramedic;]

(c) Present evidence of completion of education and training regarding determination of death and preservation of evidence as required by KRS 311A.185;

(d) Obtain certification as a paramedic by the National Registry of Emergency Medical Technicians [NREMT-registration as a NREMT-P];

(e) Submit a completed Paramedic Initial Licensure Application in KEMSIS [signed "Application for Paramedic Examination and Licensure"];

(f) [Present written evidence of completion of current HIV/AIDS education or training required by KRS 311A.110; and

(g) Pay the fee pursuant to [required by] 202 KAR 7:030;[-]

(g) Undergo a background check pursuant to KRS 311A.050 and 311A.100;

1. The background check shall be:

a. National in scope for an applicant not currently certified at any level in Kentucky;

b. Statewide in scope for an applicant with current certification in Kentucky;

c. Less than six (6) months old when the applicant submits to the board all requirements for licensure; and

d. Provided by a vendor that has been contracted through the board;

2. An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check; and

(h) Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

1. A social security card;

2. Birth certificate;

3. A United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card); or

4. Other legal authorization to live and work in the United States;

(2) A Paramedic licensed pursuant to this section shall complete training regarding determination of death and preservation of evidence as required by KRS 311A.185 prior to beginning work for a licensed agency in Kentucky.

(a) Training in determination of death and preservation of evidence as required by KRS 311A.185 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.]

(2) An applicant for licensure as a paramedic shall successfully complete all NREMT testing and become Kentucky licensed within two (2) years after fulfilling all of the requirements of their paramedic education or training program, including the completion of the field summative evaluation.-]

Section 3. [Relicensure] Renewal of Licensure and Continuing Education Requirements. (1) To be eligible for renewal of licensure, a [A] paramedic shall submit to the board: [be eligible for relicensure if:]

(a) A [The applicant submits to the KBEMS office a signed,] completed Paramedic License Renewal Application in KEMSIS

["Universal Application for Recertification/Relicensure";]

(b) [The applicant maintains written evidence of completion of current education or training in CPR that:

1. Shall be taught by an individual who holds instructor certification at an appropriate level from:

a. The American Red Cross;

b. The AHA;

c. The National Safety Council;

d. The ASHI; or

e. Another board approved organization; and

2. Shall provide instruction and testing in:

a. One (1) rescuer CPR;

b. Two (2) rescuer CPR;

c. Techniques of changing from one (1) to two (2) rescuers during the performance of CPR;

d. Techniques of changing rescuers during the performance of two (2) rescuer CPR;

e. Techniques for relief of obstruction of the airway;

f. CPR of infants and small children;

g. Barrier to mouth, barrier to nose, or barrier to stoma resuscitation for adults, small children, and infants;

h. Use of oral and nasal airways;

i. Use of bag-valve-mask or other ventilation device;

j. Use of supplemental oxygen; and

k. Use and operation of an AED;

(c) The applicant maintains written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) The [applicant pays the] fee pursuant to [established in] 202 KAR 7:030; and

(c) Written evidence of either [(e) The applicant maintains evidence of any of the following]:

1. Current certification [registration] by the NREMT as a[an] paramedic [NREMT-P];

a. If this option is used the board may request, through a continuing education audit, proof of continuing education to verify compliance with the continuing education requirements of this section; or

2. NREMT Paramedic National Continued Competency Program for Continuing Education.

3. All applicants for renewal shall maintain written evidence of:

a. Current training in a cardiopulmonary resuscitation (CPR) course that:

(i) Meets all standards of the American Heart Association Basic Life Support for Healthcare Provider or Professional Rescuer course; and

(ii) Includes a psychomotor examination component and a cognitive assessment;

b. Current training in HIV/AIDS treatment and recognition required by KRS 311A.110;

c. Current training in Pediatric Abusive Head Trauma as required by KRS 311A.127;

d. Awareness of Sexual Violence Training required by KRS 311A.120; and

e. Training regarding determination of death and preservation of evidence as required by KRS 311A.185.[Successful completion of the University of Maryland Baltimore Campus Critical Care Emergency Medical Transport Program; or

3. Successful completion of sixty (60) hours of continuing education of which:

a. A maximum of sixteen (16) hours per course may be claimed for obtaining, maintaining, or instructing provider certification in:

(i) ACLS;

(ii) PALS;

(iii) BTLS;

(iv) PHTLS; or

(v) PEPP; and

b. Thirty (30) of the required sixty (60) hours shall be obtained in the following areas:

(i) Two (2) in preparatory;

(ii) Four (4) in airway management;

(iii) Five (5) in cardiac management;

(iv) Four (4) in medical or behavioral emergencies;

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- (v) Five (5) in trauma;
- (vi) Two (2) in obstetrics or gynecology;
- (vii) Five (5) in pediatrics; and
- (viii) Three (3) in operations.

(2) All applicants for relicensure shall complete a minimum of one (1) hour in disaster management or mass casualty incidents education or training.

(3) Each applicant shall provide evidence of current certification in ACLS through either the AHA or ASHI at the time of application.]

(2) [(4)] All continuing education shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.]:

(a) The instructor, medical director, training officer, course coordinator, or provider of the continuing education offering; or

(b) A medical director, service director, or training officer of the ambulance service, first response agency, fire department, rescue squad or other medical employer.].

(3) [(5)] An application for renewal of licensure shall be denied if:

(a) Prior to the licensure expiration date, the paramedic applicant has not met the applicable requirements of this administrative regulation; or

(b) The applicant has been subjected to disciplinary action that prevents relicensure at the time of application.

(4) [(6)] A licensed paramedic, in good standing, who is a member of a National Guard or a military reserve unit who [and] is called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 673b shall be renewed in accordance with KRS 12.355 upon submission of the Military Extension Application. [may be given a one (1) year extension following release from active duty to meet the applicable requirements for relicensure listed in this section. The paramedic shall submit a written request for this extension within sixty (60) days of release from active duty.]

(5) [(7)] The board [KBEMS] office may audit a paramedic's continuing education and continuing education records. The paramedic shall submit the documentation requested within ten (10) business days of receipt of the board's request.

(6) If documentation of continuing education hours consistent with this administrative regulation are not received by the office of the board within ten (10) business days of receipt of the board's request, the Paramedic license for the individual shall be summarily revoked and the individual shall reapply for licensure through Reinstatement if eligible.

(7) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

(8) The paramedic shall maintain documentation of all continuing education for three (3) [four-(4)] years from the date of completion.

Section 4. Paramedic Reciprocity. (1) An individual who is certified or licensed [A person certified or licensed] in a contiguous state to the Commonwealth of Kentucky or [another state or territory of the United States or registered] by the NREMT as a [n] Paramedic [NREMT-P] shall be eligible for [direct] reciprocity for [initial] Kentucky licensure as a paramedic if the applicant submits [individual]:

(a) A completed Paramedic Reciprocity License Application in KEMSIS; and [Is at least eighteen (18) years of age;]

(b) Proof of the applicant's [Holds current] unrestricted certification [registration] as an NREMT Paramedic or Paramedic certification or license in a contiguous state to the Commonwealth of Kentucky [a NREMT-P];]

(c) Holds a high school diploma or GED; and

(d) Holds a valid motor vehicle operators license from a state or territory of the United States.].

(2) An applicant shall pay the fee required for licensure through reciprocity pursuant to 202 KAR 7:030. [The individual 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, otherwise known as Level 4, verified by testing as necessary;

(b) Not have been found guilty of, entered a guilty plea or Alford plea to a felony offense or have completed a diversion program for a felony offense;

(c) Not have been subjected to discipline that would prevent reciprocity at the time of application;

(d) Submit an "Out-Of-State Paramedic Application" signed by the applicant;

(e) Submit written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(f) Present evidence of completion of training regarding the protocol governing the discontinuance of resuscitation, determination of death and preservation of evidence;

(g) Pay the fee required by 202 KAR 7:030; and

(h) Have successfully completed a training program, which utilized the United States Department of Transportation, National Highway Traffic Safety Administration, 1998 National Standard Curriculum, Emergency Medical Technician-Paramedic as the curriculum for education if any individual initially certified or licensed after January 1, 1985. An earlier edition of the National Standard Curriculum which was in effect in at the time of initial certification or licensure shall be considered to meet this requirement.].

(3) An applicant for Paramedic reciprocity shall undergo a national background check and have the results submitted to the board. Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of licensure through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) A Paramedic licensed pursuant to Section 4 of this administrative regulation shall not perform any procedures or skill on which the Paramedic has not been trained. A Paramedic who performs a skill for which the Paramedic does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) A Paramedic licensed pursuant to this section shall complete training regarding determination of death and preservation of evidence as required by KRS 311A.185 prior to beginning work for a licensed agency in Kentucky.

(a) Training in determination of death and preservation of evidence as required by KRS 311A.185 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

Section 5. Exemptions from Paramedic Administrative Regulations. The Kentucky licensure requirements for a paramedic shall not apply to:

(1) United States military members, [personnel or state] National Guard personnel, or employees of the United States government if the individual provides emergency medical services:

(a) On land owned by the United States government;

(b) In facilities owned by the United States government;

(c) In the performance of official duties under federal law; or

(d) As part of assistance for a mass casualty or disaster incident pursuant to federal law or official state assistance request; or

(2) A paramedic licensed in another state or territory of the United States who:

(a) Enters Kentucky with a patient being transported to a medical facility or other final destination in Kentucky; or

(b) Travels through Kentucky during the course of a patient transport from an out-of-state location to a destination outside of Kentucky, [while providing services on a United States government-owned or operated facility, while engaged in the performance of their official duties under federal law, or while providing assistance in mass casualty or disaster type situation; or

(2) A paramedic licensed or certified in another state or territory of the United States who:

(a) Comes into Kentucky to transport a patient from another

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state into Kentucky; or

(b) Is transporting a patient through the state of Kentucky to an out-of-Kentucky location.];

Section 6. Reinstatement of License. (1) A paramedic whose Kentucky license has lapsed [for a period not exceeding five (5) years.]; may reinstate their license if the applicant submits [by submitting]:

(a) A completed Paramedic Reinstatement License Application in KEMSIS; [signed "Universal Reinstatement Application";]

(b) Evidence of previous licensure as a paramedic in the Commonwealth of Kentucky;

(c) Evidence of current training in:

1. HIV/AIDS training required by KRS 311A.110;

2. Pediatric Abusive Head Trauma as required by KRS 311A.127;

3. Awareness of Sexual Violence Training required by KRS 311A.120; and

4. A cardiopulmonary resuscitation (CPR) course that:

a. Meets all standards of the American Heart Association Basic Life Support for Healthcare Provider or Professional Rescuer course; and

b. Includes a psychomotor examination component and a cognitive assessment;

(b) Written evidence of current completion of training in CPR meeting the requirements as outlined in Section 3(1) (b) of this administrative regulation;

(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110.];

(d) Payment of the fee pursuant to [established in] 202 KAR 7:030;

(e) The applicant for reinstatement of license shall undergo a national background check provided by a vendor that has been contracted through the board; and

1. An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check;

2. Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of license;

(f) The applicant for reinstatement of licensure shall bear the burden of proof of previous licensure in Kentucky if the previous Paramedic license is in issue or dispute. [Evidence of previous certification or licensure as a paramedic in Kentucky; and

(f) Evidence of successful completion within twelve (12) months preceding their application for reinstatement of the National Standard Curriculum for EMT Paramedic Refresher Course or continuing education hours that meet the requirements of the curriculum.

(2) A paramedic, whose license has lapsed for a period that exceeds five (5) years, may reinstate their license by complying with Sections 1 and 2 of this administrative regulation.

(3) An application for reinstatement of licensure shall not be considered if:

(a) The applicant is subject to disciplinary action pursuant to KRS Chapter 311A;

(b) The applicant is an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or

(c) The applicant has been subjected to discipline that would prevent reinstatement at the time of application.];

(2) An applicant shall provide evidence of successful completion of the NREMT-Paramedic national continued competency program for continuing education within the twelve (12) months preceding application for reinstatement of the Paramedic license.

(3) An applicant shall provide evidence of current skills competency by completing and submitting validation of those skills on the Kentucky Paramedic Skills Verification Report. The verification report shall be completed by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(4) An applicant ineligible for licensure pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 7. Scope of Practice. (1) A Paramedic shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

(2) If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact pursuant to KRS 39A.050, or if acting pursuant to another agreement made pursuant to KRS Chapter 39, a Paramedic licensed in another state may perform the skills and procedures approved by the certifying state. [Demonstration of Competency. A paramedic applying for relicensing or reinstatement shall demonstrate continuing competency of skills by:

(1) Written verification of competency as evidenced by signature on the relicensure or reinstatement application of a medical director, ambulance service director or ambulance service training director; or

(2) Submission of evidence of current registration as a:

(a) NREMT-P; or

(b) Completion of:

1. ACLS;

2. PALS or PEPP; and

3. BTLS, PHTLS, or CCEMTP.];

Section 8. Critical Care Endorsement. (1) A paramedic licensed by the board may be granted a critical care endorsement [MTP] upon completion [presentation] of the Paramedic Critical Care Endorsement [a board-approved] A[application, payment of the fee pursuant to 202 KAR 7:030, and completion of a training program that minimally meets the objectives of the University of Maryland Baltimore Campus CCEMTP Program. The ambulance service director and EMS medical director shall validate verification of the program having met the specified training standards.];

(2) The critical care endorsement shall be valid so long as the paramedic maintains:

(a) [C]urrent licensure as a paramedic by the board.]; and

(b) Current certification as a CCEMTP or verification of continued clinical competence by the paramedic's EMS medical director.];

(3) A paramedic with a critical care endorsement shall be authorized to perform the skills and procedures included in their education and training subject to authorization by the medical director through established protocols.];

(4) A licensed paramedic with a critical care endorsement shall be responsible for providing the KBEMS office with copies of their current CCEMTP credentials.];

Section 9. Public Notice of Negative Action. (1) The board [KBEMS] office shall cause to be published.]; on the board Web site the name of a paramedic that:

(a) Is fined;

(b) Is placed on probationary status;

(c) Is placed on restricted status;

(d) Is suspended; or

(e) Has had their certification revoked. [in the KBEMS News or similar publication of the board, or otherwise disseminate the name of a paramedic that is fined, is placed on probationary status, is placed on a restricted status, is suspended, or has had their licensure revoked.];

Section 10. Expiration of Licensure. (1) Licensure periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If a Paramedic license lapses or expires, the Paramedic shall cease provision of emergency medical services.

(3) A Paramedic who has allowed their license to lapse or expire shall be required to reinstate their licensure pursuant to Section 6 of this administrative regulation. [Temporary Certificate. (1) KBEMS staff may issue a temporary certificate to an individual who:

(a) Submits a completed "Application for Temporary

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Certificate";

- (b) Is at least eighteen (18) years of age;
- (c) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the 9th grade of education, otherwise known as Level 4, verified by testing as necessary;
- (d) Provides proof of being currently certified or licensed as a paramedic in another state or territory of the United States or is currently registered by the NREMT as a paramedic;
- (e) Presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;
- (f) Presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;
- (g) Pays the fee required by 202 KAR 7:030;
- (h) Provides the board with a copy of a statewide criminal background check from their state of residence;
- (i) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and
- (j) Has not been disciplined by or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.

(2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be reissued or renewed.]

Section 11. Determination of Death Protocol. (1) The paramedic shall determine and document that the following signs of death are present:

- (a) Unresponsiveness;
- (b) Apnea;
- (c) Absence of a palpable pulse at the carotid site;
- (d) Bilaterally-fixed and dilated pupils; and
- (e) Except in a case of trauma, asystole determined in two (2) leads on an electrocardiograph.

(2) The paramedic shall determine that one (1) of the following factors or conditions exist:

- (a) Lividity of any degree;
- (b) Rigor mortis of any degree;
- (c) Presence of venous pooling in the body;
- (d) Damage or destruction of the body which is incompatible with life; or
- (e) A copy of the EMS "Do Not Resuscitate (DNR) Form" or identification bracelet or other means of identification evidencing a patient's desire not to be resuscitated in accordance with KRS 311A.170; or

(f) A properly executed "Medical Orders for Scope of Treatment (MOST) form".

(3) If a paramedic has determined and documented that the conditions of subsections (1) and (2) of this section exist, the paramedic may, subject to the provisions of this administrative regulation, declare the patient dead.

(4) The paramedic may contact medical control or other licensed physician, if authorized in writing by the medical director, for advice and assistance in making a determination required by this administrative regulation.

(5) If a paramedic determines a patient to be dead, the paramedic shall remain on the scene unless their personal safety is jeopardized, until the arrival of the coroner, deputy coroner, or law enforcement officer from that jurisdiction.

Section 12. Discontinuance of Resuscitative Efforts. (1) A paramedic may discontinue resuscitation if:

- (a) The patient has suffered cardiac arrest prior to arrival at the hospital;
- (b) The paramedic has performed the resuscitative efforts required in the resuscitation protocol of the ambulance service medical director;
- (c) The resuscitative efforts were unsuccessful; and
- (d) The patient meets the criteria established in Section 11(1) of this administrative regulation.

- (2) A paramedic may also discontinue resuscitation:
 - (a) If the safety of the paramedic is at risk; or
 - (b) At mass casualty incidents.
- (3) A paramedic may discontinue resuscitation initiated by someone other than a paramedic if:
 - (a) The patient has suffered cardiac arrest;
 - (b) The resuscitative efforts required in the resuscitation protocol of the ambulance service medical director have been performed and documented;
 - (c) The resuscitative efforts were unsuccessful; and
 - (d) The patient meets the criteria established in Section 11(1) of this administrative regulation.

(4) If a paramedic discontinues resuscitation on a patient prior to transport of the patient to a medical facility, the paramedic shall make the notifications required by KRS 72.020 and at least one (1) member of the ambulance crew shall remain on the scene until the arrival of a coroner, deputy coroner or law enforcement officer.

(5) If a paramedic discontinues resuscitation on a patient during transport to a medical facility, the paramedic shall make the notifications required by KRS 72.020 to the officials of the county in which the paramedic discontinued resuscitation. Upon making the notification, the paramedic shall determine from the coroner whether to remain at that location, to return the deceased to a facility within the primary service area of the ambulance provider, or to continue on to the medical facility with the deceased.

(6) A paramedic shall discontinue resuscitation efforts if presented with a properly executed EMS DNR Form, or properly executed Medical Orders for Scope of Treatment (MOST) form.

Section 13. The paramedic shall document all items required by Sections 11 and 12 of this administrative regulation on the Patient Care Report [Ambulance Run Form] required by KRS 311A.190.

Section 14. Training of Paramedics in Determination of Death and Preservation of Evidence.

(1) The training program shall not be less than one (1) hour in length and, at a minimum, shall include:

- (a) Information on and a copy of KRS 311A.170;
- (b) Information on and a copy of this administrative regulation;
- (c) Information on and a copy of KRS 72.020;
- (d) Information on and a copy of KRS 446.400;
- (e) Information on the duties of and role of the coroner and state medical examiner; and
- (f) Information on preservation of evidence at the scene of a death.

(2) The training shall be:

- (a) Provided as part of a paramedic training course conducted by an approved EMS-TEI via:
 - 1. Classroom instruction;
 - 2. Video conferencing or other distance learning media; or
 - 3. Video [taped] presentation or computer based learning; and

(b) Conducted under the supervision of a medical director.

(3) The medical director of the ambulance service or EMS provider conducting the training shall request the coroner of the county in which the training is provided to attend and participate in the training.

(4) The EMS-TEI or the medical director providing the training shall maintain the following records:

- (a) A copy of the course outline used in the training to verify that the training has been conducted in accordance with the requirements of this administrative regulation;
 - (b) A sign-in sheet with the printed and signed names and certification or license numbers and state of license of all paramedics who successfully completed the training, including the signature of the educator supervising the education program; and
 - (c) Curriculum vitae for each member of the course faculty.
- (5) A certificate or letter of certification shall be provided to each participant in the program at the conclusion of the training.
- (6) The board [KBEMS] office shall maintain an approved curriculum that may be used by entities providing training

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specified by this administrative regulation.

Section 15. Downgrading Licensure. (1) A paramedic currently licensed as a paramedic by the board shall be eligible for licensure downgrade if:

(a) The license is in good standing with no pending disciplinary action;

(b) The applicant submits a completed Paramedic License Downgrade Application in KEMSIS; and

(c) The applicant pays the fee pursuant to 202 KAR 7:030;

(2) A paramedic is only eligible to downgrade their license to an Advanced Emergency Medical Technician, Emergency Medical Technician, or Emergency Medical Responder certification.

(3) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(4) The applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

(a) Statewide in scope for an applicant with current certification in Kentucky;

(b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and

(c) Provided by a vendor that has been contracted through the board.

(5) The applicant shall provide proof of:

(a) Current certification by the NREMT as a Paramedic; or

(b) Successful completion of the NREMT Emergency Medical Technician National Continued Competency Program for Continuing Education which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601;

(c) Completion of a cardiopulmonary resuscitation (CPR) course that:

1. Meets all standards of the American Heart Association (AHA) Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC); and

2. Includes a psychomotor and a cognitive assessment;

(d) Completion of current HIV/AIDS training required by KRS 311A.110;

(e) Pediatric Abusive Head Trauma required by KRS 311A.127; and

(f) Awareness of Sexual Violence Training required by KRS 311A.120.

(6) Downgrade shall be denied if the applicant has not met the requirements of this section or has been subject to disciplinary action that prevents certification at the time of application.

(7) The applicant shall be responsible for meeting the renewal requirements of the downgraded certification level issued prior to expiration of that certification.

(8) To reinstate the certification or license that was previously held, the applicant shall meet the regulatory requirements for that level of certification or licensure.

(9) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon downgrading their license.

(10) Once the applicant has downgraded their certification or license, the applicant is no longer permitted to provide emergency medical services at the previous certification or license level held.

(11) An applicant applying for downgrade that does not comply with this section of this administrative regulation shall be subject to disciplinary action pursuant to KRS Chapter 311A.

(12) All endorsements, certifications, or licenses held at the previous certification or license level shall be void at the completion of the downgrade.

Section 16. Surrender of License. (1) A paramedic surrendering licensure shall:

(a) Submit a completed Paramedic License Surrender Application in KEMSIS; and

(b) Pay the fee pursuant to 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon surrendering their license.

Section 17. Reporting Requirements. (1) A paramedic shall maintain current demographic information in KEMSIS including:

(a) Legal name;

1. Any changes to your legal name shall be submitted using the Name Change application in KEMSIS; and

2. One of the following documents as verification of name change:

i. Social Security Card;

ii. Driver's license; or

iii. Passport;

(b) Mailing address;

(c) Email address; and

(d) Phone number.

(2) A paramedic that does not comply with this section of this administrative regulation shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 18 [45]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Paramedic Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077E, January 2009;

(b) "Paramedic Initial License Application" in KEMSIS, July 2019;

(c) "Paramedic License Renewal Application" in KEMSIS, July 2019;

(d) "Paramedic Reciprocity License Application" in KEMSIS, July 2019; [The United States Department of Transportation, National Highway Traffic Administration, "1998 National Standard Curriculum, Emergency Medical Technician-Paramedic" (1998 Edition);

(b) Field and Pilot Test Didactic and Practical Laboratory Hours Report of the United States Department of Transportation, National Highway Traffic Administration, 1998 National Standard Curriculum for Emergency Medical Technician-Paramedic;

(c) Field and Pilot Test Clinical Report of the United States Department of Transportation, National Highway Traffic Administration, 1998 National Standard Curriculum for Emergency Medical Technician-Paramedic;

(d) "Application For Paramedic Examination and Licensure" (June 2003);

(e) "Out Of State Paramedic Application" (June 2003);

(f) "Application for Paramedic License Reinstatement" (June 2003);

(g) (e) Kentucky Board of Emergency Medical Services, Pre-Hospital Determination of Death and Preservation of Evidence Training Curriculum (05-02); [-and]

(f) "Paramedic Reinstatement License Application" in KEMSIS, July 2019;

(g) [(h)] "Kentucky Emergency Medical Services Do Not Resuscitate (DNR) Order", July 2019; [-]

(h) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(i) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;

(j) "Kentucky Medical Orders for Scope of Treatment (MOST) Form", July 2019;

(k) "Paramedic Critical Care Endorsement Application" in KEMSIS, July 2019;

(l) "Paramedic Skills Verification Report", July 2019;

(m) "Paramedic License Downgrade Application" in KEMSIS, July 2019;

(n) "Paramedic License Surrender Application", in KEMSIS July 2019;

(o) "National Registry of Emergency Medical Technicians National Continued Competency Program Paramedic", October 2016;

(p) "American Heart Association Guidelines for CPR and Emergency Cardiovascular Care", November 2018;

(q) "National Registry of Emergency Medical Technicians Paramedic Psychomotor Examination Users Guide", September 2016;

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(r) "Name Change Application" in KEMSIS, July 2019;

(s) "Military Extension Application" in KEMSIS, July 2019; and

(t) "United States Citizenship and Immigration Services (U.S.C.I.S) Permanent Resident Card (form I-551/Green Card)", July 2019.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505, by appointment [2545 Lawrenceburg Road, Frankfort, Kentucky 40604], Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: February 13, 2020

FILED WITH LRC: June 12, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2020 at 1:00 p.m. Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey S. Walther, Legal Counsel, Kentucky Board of Emergency Medical Services, Walther, Gay & Mack, PLC; 163 East Main Street, Suite 200, Lexington, Kentucky 40588, phone (859) 225-4714, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey S. Walther

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures.

(b) The necessity of this administrative regulation: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures. These amendments are necessary to allow Kentucky Paramedics the opportunity to become licensed and maintain licensure to protect the citizens of the Commonwealth of Kentucky. Educational and licensure processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025 by establishing the requirements and procedures for licensure, relicensure, and reciprocity for paramedics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures. This administrative regulation will assist Paramedics in becoming licensed utilizing more simplistic guidelines and processes and provides additional guidance on educational requirements and will

allow the board to provide more effective customer service to applicants for licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines licensure application processes for Paramedics and provides additional guidance on application processes and responsibilities of the Paramedic. Additionally, unnecessary and dated requirements and terminology have been removed.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow Paramedics the opportunity to become licensed and maintain licensure to protect the citizens of the Commonwealth of Kentucky. Educational and licensure processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025 by establishing the requirements and procedures for licensure, relicensure, and reciprocity for paramedics.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, and paramedics will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies shall implement the standards relating to Emergency Medical Technicians pursuant to this administrative regulation and shall execute their duties consistent with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants seeking licensure as a Paramedic will benefit from decreased licensure requirements and processing time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding source is necessary 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: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally

to all licensed agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, and paramedics will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(Amendment)**

202 KAR 7:601. Training, education, and continuing education

RELATES TO: KRS Chapter 271, KRS 311A.050, KRS 311A.110, KRS 311A.115, KRS 311A.120, KRS 311A.130, KRS Chapter 362, and KRS Chapter 365.

STATUTORY AUTHORITY: KRS 311A.020, KRS 311A.025, KRS 311A.030, KRS 311A.060, KRS 311A.110, KRS 311A.115, KRS 311A.120, KRS 311A.125, and KRS 311A.130.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation establishes requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also establishes standards for the certification and recertification of emergency medical services[EMS] educators and providers.

Section 1. Education Committee.

(1) The board shall create and recognize a standing committee on EMS Education.

(2) The Education Committee shall consist of seven (7) voting members representative of EMS Educators in the Commonwealth [state] of Kentucky. The Education Committee shall consist of:

(a) One (1) voting member of the board;

(b) One (1) director, coordinator or lead instructor affiliated with a board certified EMS-TEI 4.

(c) One (1) director, coordinator, or lead instructor affiliated with a board certified EMS-TEI 3.

(d) One (1) director, coordinator, or lead instructor affiliated with a board certified EMS-TEI 2.

(e) One (1) director, coordinator, or lead instructor affiliated with a board certified EMS-TEI CE.

(f) Two (2) EMS educators at large affiliated with a board certified EMS-TEI. ~~At least one (1) voting member of the Education Committee shall also be a member of the Kentucky Board of Emergency Medical Services.~~

(3) The Education Committee shall schedule on an annual basis at least six (6) regular meetings of the committee.

(4) The purpose and charge of the Education Committee shall be to:

(a) Assist the board in developing a strategic plan for EMS education in the ~~[state of Kentucky]~~ Commonwealth of Kentucky;

(b) Act as a resource for EMS educators and EMS-TEIs in the Commonwealth of Kentucky; and

(c) Assume the lead role in formulating, drafting, and sending to the board for approval and subsequent promulgation of all administrative regulations that set the standards and requirements for EMS education and EMS provider certification in the Commonwealth of Kentucky.

Section 2. EMS-TEI Certification.

(1) Only an entity certified by the board as an EMS-TEI shall be authorized to conduct training and education programs in the Commonwealth of Kentucky that lead to certification or licensure by the ~~board [Kentucky Board of Emergency Medical Services (KBEMS)].~~ Training shall include:

(a) In person;

(b) Online or hybrid; and

(c) Laboratory, clinical, or field internship.

(2) An applicant for certification as an EMS-TEI in the Commonwealth of Kentucky may be certified at the following levels:

(a) EMS-TEI 1, which includes EMR and continuing education;

(b) EMS-TEI 2, which includes EMR, ~~[and] EMT,~~ and continuing education;

(c) EMS-TEI 3, which includes EMR, EMT, ~~[and] AEMT,~~ and continuing education;

(d) EMS-TEI 4, which ~~includes~~[include] EMR, EMT, AEMT, ~~[and EMT–P.] Paramedic,~~ and continuing education; or

(e) EMS-TEI CE, which includes continuing education only.

(3) An applicant may seek one (1) ~~level~~[or multiple levels] of certification during the ~~[two (2)] one (1)~~ year certification term. A single applicant, agency, or business shall not hold more than one (1) TEI certification simultaneously.

(4) An applicant for a level of EMS-TEI certification shall meet all requirements ~~[ef]~~ for that level.

(5) An applicant for certification as an EMS-TEI shall electronically submit a completed Training and Educational Institution (TEI) Application, the appropriate EMS-TEI pre-inspection worksheet (Level 1-4 or CE Only), and upload all required documentation listed in the EMS-TEI pre-inspection worksheet to the EMS-TEI KEMSIS account. [An applicant for certification at a level of EMS-TEI shall submit a completed Training and Educational Institution (TEI), KBEMS-E14, with the Kentucky Board of Emergency Medical Services (KBEMS).]

(6) An applicant shall submit a nonrefundable fee pursuant to 202 KAR 7:030 with the Training and Education Institution (TEI) Application.[An applicant shall submit fees as required by 202 KAR 7:030 with the Training and Education Institution (TEI), KBEMS-E14.]

(7) An applicant applying for an EMS-TEI certification shall meet all requirements for that level within sixty (60) days of submitting the Training and Education Institution (TEI) Application for certification. An applicant that exceeds the sixty (60) day requirement shall reapply and resubmit all required fees.

(8) An Emergency Medical Services (EMS) training and educational entity not residing in the Commonwealth of Kentucky, but seeking to do business in Kentucky as an EMS-TEI, shall obtain EMS-TEI certification with the board before teaching any EMS courses that lead to certification or licensure by the board. Such courses include:

- (a) Initial EMS certification courses; and
- (b) EMS continuing education courses.

1. This does not include continuing education courses covered in Section 13(1) of this administrative regulation.

(9) An EMS-TEI that had its certification revoked shall be eligible to apply for certification as an EMS-TEI two (2) years after the date of revocation. This will be enforced by name of entity holding the EMS-TEI certification and name of owner or operator listed on the TEI Application and official business license(s) filed by the entity, owner or operator with local, county and state officials.

(10) An EMS-TEI may surrender its certification prior to the end of a certification period by notifying the board in writing of the intent to do so thirty (30) days prior to the intended effective date of the surrender.

(a) An EMS-TEI surrendering its certification while classes are underway shall notify the students impacted by the closure in writing at least thirty (30) days prior to the intended effective date of closure.

(b) An EMS-TEI surrendering its certification while courses are underway shall complete the courses underway before surrendering its EMS-TEI certification or fully refund all tuition and fees paid by the students in the courses underway that are impacted by the EMS-TEI closure.

(11) An EMS-TEI that does not comply with Section 2(10) of this administrative regulation shall not be eligible to reapply for EMS-TEI certification for a period of five (5) years from the date of closure. This administrative regulation shall not preclude civil action against the TEI Owner, Director, or business.

Section 3. ~~Initial~~ Certification Requirements for EMS-TEIs.

(1) If an applicant ~~[is organized as a business entity and]~~ is required ~~[pursuant to KRS Chapters 274, 362, and 365]~~ to file ~~as a business entity~~ with Kentucky's Secretary of State, the applicant for EMS-TEI certification shall provide proof of registration with the Kentucky Secretary of State ~~to the board~~ that the EMS-TEI is legally able to conduct business in the Commonwealth of ~~state~~ Kentucky. The applicant shall provide documentation of exemption status if not registered with the Kentucky Secretary of State and proof of registration with local, county or state officials as an individual operator or a Doing Business As (DBA).

(2) If an applicant is required to notify, obtain permission, or obtain license from another regulatory entity in the Commonwealth of Kentucky to operate as an educational entity, it shall be the responsibility of the applicant to make the appropriate notifications, obtain permission, or obtain license to legally operate in the Commonwealth of Kentucky.

(a) An EMS-TEI that fails to comply with Section 3(1) or (2) of this administrative regulation shall be subject to disciplinary action by the board pursuant to KRS Chapter 311A.

(3) Facilities.

(a) Facilities where EMS-TEI courses are conducted shall be maintained and operated in compliance with the safety and health requirements pursuant to local, city, and county ordinances and federal and state laws; and

- 1. Sponsored or approved by a sponsoring agency;
- 2. Enrollment shall not exceed the design characteristics of the facilities;
- 3. Controlled environment, including:
 - (a) Temperature;
 - (b) Humidity;
 - (c) Lighting; and
- 4. Adequate and appropriate for instruction in classrooms and

laboratories:

(a) Provide appropriate space for students to participate in classroom activities, kinematic learning and practice activities;

(b) Provide appropriate space for instructor preparation; and

(c) Adequate and secure storage for instructional materials.

(4) ~~[(2)]~~ An applicant shall provide the board with an organizational chart indicating, at a minimum:

(a) The names, contact information, and addresses of the owner, operator, chief administrative officer, and other personnel necessary for operation of the entity as an EMS-TEI;

(b) The ~~name~~[names] and [addresses] contact information of the ~~EMS-TEIs~~ [EMS-TEI's designated agent for receiving service] director;

(c) The name and [address] contact information of the ~~EMS-TEIs~~ [EMS-TEI's] medical director; proof that the medical director is qualified pursuant to 202 KAR 7:801; and a ~~[document]~~ memorandum of understanding or contract executed between the owner of the EMS-TEI and the medical director outlining the relationship, duties, and requirements of a medical director for an EMS-TEI. The memorandum of understanding or contract shall include at a minimum that:

1. The medical director shall be responsible for medical oversight of the program;

2. The medical director shall review and approve the educational content of the program curriculum;

3. The medical director shall review and approve the instruments and processes used to evaluate students in didactic, laboratory, clinical, and field internship;

4. The medical director shall review the progress of each student throughout the program, and assist in the determination of appropriate corrective measures, when necessary;

5. The medical director shall engage in cooperative involvement with the program director; and

6. The medical director's interaction shall be in a variety of settings, such as lecture, laboratory, clinical, field internship. Interaction may be by synchronous electronic methods. ~~]; and]~~

(d) The name and [address] contact information of the ~~EMS-TEIs~~ [EMS-TEI's] program coordinator. ~~]; and~~

(e) The names and contact information of all EMS-TEI Instructors.

(5) EMS training courses that require accreditation by the National Registry of EMT's (NREMT) shall submit current accreditation to the board upon request. ~~[(3) Beginning January 1, 2013, if the EMS-TEI will be offering courses leading to certification or licensure for EMS personnel in Kentucky that is dependent on EMS-TEI accreditation, the applicant for EMS-TEI shall submit proof of accreditation.]~~

(a) An accreditation letter of review is acceptable in the interim for newly formed EMS-TEIs that are required by the NREMT to obtain accreditation for testing purposes. This does not apply to out of state applicants. Out-of-state applicants that are required by the NREMT to obtain accreditation for testing purposes must provide documentation of full accreditation prior to receiving EMS-TEI certification by the board.

(b) Continuous accreditation status must be maintained by the EMS-TEI as required by this administrative regulation. Failure to maintain continuous accreditation status by the TEI shall be grounds for summary revocation of the TEI certification.

(6) EMS-TEIs shall obtain and maintain professional liability malpractice insurance of a minimum of \$1 million. The EMS-TEI shall provide proof of professional liability malpractice insurance upon initial certification, certification renewal, and upon application for certification upgrade.

Section 4. Certification Periods and Inspections. (1) An EMS-TEI shall display the current certificate issued through the ~~board~~ [Kentucky Board of Emergency Medical Services]

(a) In a prominent place in the ~~EMS-TEIs~~ [EMS-TEI's] business; ~~and.]~~

(b) In the classroom if classes are being conducted away from the primary business location; and

(c) Provided electronically to the student if the classes are being conducted online.

(2) Certification of an EMS-TEI shall be valid for a period of

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~~one (1) year [two (2) years]~~ unless limited by disciplinary action.

(3) Prior to expiration of the ~~one (1) year [two (2) years]~~ certification period, an EMS-TEI may apply for recertification for a subsequent ~~one (1) [two (2)]~~ year period.

(4) Upon application for recertification, an applicant shall ~~electronically submit [re-submit an] a~~ Training and Educational Institution (TEI), [KBEMS-E14] Certification Renewal Application through the EMS-TEI KEMSIS account with the board.

(a) The appropriate EMS-TEI pre-inspection worksheet (Level 1-4 or CE Only) and upload all required documentation listed in the EMS-TEI pre-inspection worksheet (Level 1-4 or CE Only) to the EMS-TEI KEMSIS account;

(b) An EMS-TEI level 1 thru 4 shall provide documentation that the EMS-TEI has instructed or initiated at least one (1) initial certification course at one of the levels in which the EMS-TEI is certified within the preceding twelve (12) months of the current expiration date;

(c) An EMS-TEI CE shall provide documentation that the EMS-TEI has instructed or initiated at least one (1) continuing education provider course that meets the continuing education requirements established by 202 KAR 7:201, 202 KAR 7:301, 202 KAR 7:330, or 202 KAR 7:401 within the preceding twelve (12) months of the current expiration date; and

(5) An EMS-TEI seeking certification renewal [~~recertification~~] shall pay all applicable nonrefundable fees upon application. Failure to pay fees or subsequent rejection of a payment method shall result in denial of the Training and Educational Institution (TEI) Application, [KBEMS-E14].

(6) An applicant for EMS-TEI renewal shall meet all renewal requirements prior to the expiration date of the TEI certification.

(a) A TEI that does not comply with all renewal requirements prior to the certification expiration date shall expire.

(b) A TEI that allows the TEI certification to expire shall be required to apply as an initial EMS TEI.

(7) [~~(6)~~] An [A newly-certified] EMS-TEI applying for initial or certification upgrade shall undergo an inspection prior to offering classes [the EMS-TEI's first class. Failure to submit to the inspection shall result in immediate revocation of the certification]. The type of inspection, on-site or virtual, shall be determined by the office of the board and the EMS-TEI shall be responsible for establishing the virtual connection at their facility if necessary.

(8) [~~(7)~~] Each inspection shall ensure that the EMS-TEI has met all applicable requirements [~~in Section 5~~] of this administrative regulation. If the board's inspection finds that the EMS-TEI has failed to meet a requirement, the EMS-TEI shall correct all deficiencies prior to offering a class and receiving subsequent certification as an EMS-TEI. [

(8) ~~The board shall inspect an EMS-TEI upon submission of the EMS-TEI's notice of intent to upgrade the level of courses offered.]~~

(9) The board may conduct inspections of EMS-TEIs for initial, renewal, certification upgrade, or to monitor compliance with statutory and regulatory requirements for TEIs. Inspections may be schedule or unscheduled. [The board may inspect an EMS-TEI upon submission of the Training and Educational Institution (TEI), KBEMS-E14, to renew certification as an EMS-TEI.]

(10) The office of the board shall conduct an application review of required documentation and inspection of the EMS-TEI applicant no later than sixty (60) days following the submission of the Training and Educational Institution (TEI) Application by the EMS-TEI applicant for initial certification and upgrades. [The board shall conduct the inspection of an EMS-TEI no more than ninety (90) days following KBEMS' receipt of notice of intent to upgrade.]

(11) Approval of notice of intent to upgrade shall not extend the ~~one (1) year [two (2) year]~~ EMS-TEI certification period.

(12) An EMS-TEI requesting a name change or change in ownership shall:

(a) Notify the board in KEMSIS no later than thirty (30) days prior to the name change or change in ownership by completing:

1. A new Training and Educational Institution (TEI) Application electronically through the EMS-TEI KEMSIS account;

2. Legal documentation reflecting the legal name or

ownership change or registration with the Kentucky Secretary of State Office reflecting the change which shall be uploaded with the TEI application in KEMSIS; and

3. Payment of the application fee pursuant to 202 KAR 7:030 in KEMSIS.

Section 5. EMS-TEI Operating Requirements.

(1) Each EMS-TEI shall maintain files for a period of ~~three (3) [seven (7)]~~ years beyond the end date of each EMS Course program that contain the following documentation:

(a) For courses requiring accreditation, all documents necessary for the EMS-TEI to have met the accrediting agency's standards, policies, and guidelines;

(b) A copy of the last accreditation self-study and letter of accreditation

(c) [~~(b)~~] The student attendance sign-in sheets for each course taught, including:

1. Lectures;
2. Practical skills lessons; and
3. Clinical and field rotations;

(d) [~~(c)~~] A master copy of each set of [~~written~~] examinations administered and answer keys for the exams;

(e) [~~(d)~~] A master copy of practical skills examination forms;

(f) [~~(e)~~] A master copy of each course syllabus;

(g) [~~(f)~~] Current, written affiliation agreements executed between hospitals or EMS agencies and the EMS-TEI;

(h) [~~(g)~~] Health records for students as may be required by the EMS-TEI or as expressly required in written affiliation agreements and determined necessary for students to complete clinical assignments, field -internships, or summative field evaluations;

(i) [~~(h)~~] Records of all disciplinary actions taken against a student, if applicable. Records shall include notification to students of the complaint; responses, if applicable, made by or on behalf of the student; and actions taken as a result of a complaint or other documented incident, grievance, or deficiency;

(j) [~~(i)~~] For students requiring remediation, documentation of specific activities or procedures requiring remediation and actions taken in response to deficiencies, including how the specific remediation was accomplished and [if] the success or failure of remediation;

(k) [~~(j)~~] A master file of the objectives and competencies to be achieved by students during each educational program; and

(l) [~~(k)~~] Documentation of other [another] requirements that the EMS-TEI has established as part of the offered courses.

(2) Failure of an EMS-TEI to maintain records required by the board shall result in disciplinary action against an EMS-TEI.

(3) The board [KBEMS] shall require an EMS-TEI to submit a copy of the EMS-TEI[']s annual accreditation report electronically through the EMS-TEIs KEMSIS account if accreditation is necessary for licensure or certification of the students taking the EMS-TEI[']s offered course.

(4) EMS-TEIs shall conduct an annual review and revision of all courses and programs to ensure the EMS-TEI has complied with necessary updates to courses, programs, and accepted educational standards. The participants involved with the annual review shall include:

(a) The program director;

(b) Program coordinator;

(c) Medical director;

(d) An instructor or a faculty member that was actively involved in teaching courses during the preceding twelve (12) months of the annual review; and

(e) A student that successfully completed a course offered through the EMS-TEI during the preceding twelve (12) months of the annual review.

(5) An EMS-TEI shall document in writing the required annual review and updates resulting from the annual assessment.

(6) Documentation of the annual review shall be in writing, signed by the program director, [owner or] program coordinator, and medical director. The annual review shall be maintained in the course or TEI program files and submitted to the board electronically with the annual TEI renewal application.

(7) An EMS-TEI shall assure that all physical resources required by the curriculum, including classrooms, skill practice

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areas, notices of where to purchase or access textbooks, instructional aides, equipment, and supplies shall be:

(a) Available at each class session where skills are taught or practiced;

(b) Adequate in number to allow for practice by students enrolled; and

(c) In good working order and well-maintained.

(8) An EMS-TEI shall maintain and protect the privacy of all records pertaining to the health and safety of patients, students, and faculty members that are obtained or developed through or as a result of participation in training and educational activities with the EMS-TEIs.

(9) The EMS-TEI shall be responsible for knowing and following all federal and state laws [and requirements established in 202 KAR Chapter 7] relevant to safeguarding privacy of records, including educational and health records.

(10) The EMS-TEI shall develop and make available to all prospective students a clearly defined admissions policy [and procedure].

(11) An EMS-TEIs [EMS-TEI's] admission policy shall include specific requirements for students to gain admission, maintain enrollment, and all academic requirements necessary to successfully complete the offered course or program. The admission policy shall be provided to the student at the start of the course and a verified receipt by signature shall be kept in the student's file including any changes to the admission policy while the student is enrolled in the course. Admissions policies [and procedures] shall include at a minimum:

(a) Tuition rates and fees associated with the training and education program;

(b) Fees and other costs associated with remediation;

(c) A descriptive synopsis of the curriculum for each type of course taught;

(d) Course educational objectives;

(e) Classroom lecture and skills practice schedules;

(f) Clinical or field rotation locations with [tentative] beginning and ending dates;

(g) Participation requirements for each clinical or field rotation site;

(h) Continued course competency and course completion requirements; and

(i) [(h)] Citations to and language of prohibited actions pursuant to KRS [Chapter] 311A.050 that provide grounds for sanctions against or denial of individuals making application for certification or licensure by the board.

(12) EMS-TEIs shall establish written policies that provide for:

(a) The creation and use of course or program advertising that accurately portrays the course or program content as offered by the EMS-TEI;

(b) A uniform process for filing, investigating, and resolving complaints or grievances by applicants, students, preceptor sites, patients, members of the general public, or faculty members;

(c) A procedure for a student to withdraw from a course and a clear statement of refund policies and the steps necessary for a student to obtain a refund of tuition or fees already paid;

(d) Faculty to acquire or develop examinations for each course offered;

(e) The establishment of and adherence to examination procedures and policies;

(f) The requirements for a student to take and pass examinations in courses the EMS-TEI offers including requirements that shall be met during the course for the student to be eligible to take the National Registry of EMTs certification exam; and

(g) Public disclosure, both in print and web-based materials, concerning the EMS-TEI student cumulative pass rate on the NREMT certification exam for the calendar year. The disclosure shall be updated by January 31 of each year and shall include at a minimum:

1. All provider levels tested;

2. Date range for which the report was calculated;

3. EMS-TEI name, number, and physical address;

4. Number of students that took the exam; and

5. Cumulative pass rate calculated by percentage.[Notification

~~to all students and prospective students of their right to ask for and obtain the pass—fail rates of past students who have taken the National Registry Exam or other board approved certification test. The pass—fail rate shall be calculated for courses given within the last two (2) years.]~~

(13) An EMS-TEI shall assure that each student, while participating in a clinical or field rotation, is clearly identified as a student [and by first and last name]. Identification shall be accomplished by use of:

(a) [A] Nameplate;

(b) A uniform; or

(c) Other publicly apparent means.

(14) A student or a faculty member shall maintain proper personal and professional conduct during classroom, clinical, and field internship activities.

(15) [(14)] EMS-TEIs shall have [include] a program director [chief administrative officer (CAO) or designee] who shall be responsible for:

(a) All aspects of the program, including administration, organization, and supervision of the educational program [Administer and oversee the EMS-TEI];

(b) Assuring[Assure] the quality and credentials of the program coordinator, EMS educators, EMS educator adjuncts, and students accepted into the EMS-TEIs[EMS-TEI's] programs or courses;

(c) Assuring[Assure] the security of examination results and materials;

(d) Monitoring[Monitor] the activities of the EMS-TEIs[EMS-TEI's] faculty and students; [and]

(e) Maintaining[Maintain] records and documents and submit reports[-];

(f) Continuously reviewing the quality and improvement of the educational program;

(g) Long range planning and ongoing development of the program;

(h) The orientation, training, and supervision of clinical and field internship preceptors; and

(i) The effectiveness and quality of fulfillment of responsibilities delegated to another qualified individual.

(16) [(15)] EMS-TEIs shall include faculty and instructional staff who shall be responsible for:

(a) Didactic, clinical instruction, or supervised practice in each location where students are assigned; and

(b) Coordination, supervision, and frequent assessment of the students' progress in achieving acceptable program requirements.[If applicable, an EMS-TEI shall have a Paramedic Course Coordinator for paramedic training and education courses. The Paramedic Course Coordinator shall maintain a Level-III EMS Educator status in the Commonwealth of Kentucky.]

(17) [(16)] A certified EMS-TEI shall maintain an ongoing level of competence, evidenced by a minimum annual pass rate for each level of instruction of seventy (70) [fifty–(50)] percent calculated [based] upon a third attempt cumulative [measurement] pass rate of students who have taken the National Registry of EMTs and other board-approved exam(s) [exam for the first time] within the twelve (12) [twenty-four (24)] months immediately preceding the EMS-TEI[-]s renewal date. The minimum annual pass rate shall be calculated, and compliance determined by, the office of the board.

(a) EMS-TEIs that fail to maintain a seventy (70) percent pass rate for each level of instruction as required by Section 5(17) of this administrative regulation shall notify all students enrolled in courses offered by the EMS-TEI that the EMS-TEI is not in compliance with testing standards.]

(17) An EMS-TEI's competency shall also be demonstrated by compliance with KRS Chapter 311A and 202 KAR Chapter 7 and the EMS-TEI's process for remediating students who take but fail to pass the board approved test.]

(18) If an EMS-TEI fails to meet an ongoing level of competence determined according to this administrative regulation and demonstrated by compliance with KRS Chapter 311A and 202 KAR Chapter 7 [section], the EMS-TEI shall be subject to a plan of correction mediated through the office of the board. An EMS-TEI that cannot maintain an ongoing level of

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competence may be subject to discipline pursuant to KRS Chapter 311A.

(19) If requested by the office of the board, the EMS-TEI shall submit graduate data to the Kentucky Center for Education and Workforce Statistics including:

- (a) Student's name;
- (b) Date of birth;
- (c) Social Security number;
- (d) Gender;
- (e) Ethnicity;
- (f) Residency at point of graduation; and
- (g) The Classification of Instructional Programs (CIP) code, if applicable.

(20) The EMS-TEI director shall keep the EMS-TEI KEMSIS account information updated, including:

- (a) The EMS-TEI demographics;
- (b) The EMS-TEI personnel roster; and
- (c) The EMS-TEI policy and procedures required by this administrative regulation.

(21) The program director of EMS-TEIs offering initial certification courses shall create and maintain, with current information, a National Registry of EMTs educational program account.

(a) The EMS education program name, director name, address, and contact information listed with NREMT shall match the EMS-TEI program information listed in KEMSIS.

Section 6. Disciplinary Action. (1) As certified entities under the board's jurisdiction, all EMS-TEIs shall be subject to the disciplinary procedures and sanctions established in KRS Chapter 311A.

(2) Discipline of an EMS-TEI as a certified entity shall not prevent the board from taking disciplinary action against a certified or licensed individual associated with the EMS-TEI at any level of certification or licensure applicable.

Section 7. Reporting Requirements for EMS-TEI. (1) An EMS-TEI shall submit electronically to the board [KBEMS] the documents as required by [subsection (2) of] this section for all EMS courses or psychomotor testing that lead to certification by The National Registry of EMTs [licensure] or certification or licensure by the board.

(2) An EMS-TEI shall submit the following documents to the board office:

(a) Course Notification Application [form] submitted no less than fourteen (14) days prior to the course start date; [and]

1. An EMS-TEI shall notify the board within seven (7) days of any changes to a board approved class or psychomotor testing start and end date using Course Change Notification Application.

2. The start and end date shall only be changed once and cannot exceed thirty (30) days from the original start and end date.

3. A course or psychomotor test shall have a start date in the same calendar year in which the course or psychomotor testing number is issued.

(b) Initial Educational [Institution] Course Roster[Rosters] submitted no less than fourteen (14) days prior to the course start date listed on the Course Notification Application;

(c) If applicable, the Comprehensive Skills Evaluation Report within thirty (30) days of the course completion date listed on the Course Notification Application;

(d) Final Educational Course Roster within thirty (30) days of course completion date listed on the Course Notification Application;

(e) Psychomotor Exam Application submitted no less than fourteen (14) days prior to the psychomotor exam start date.

1. Psychomotor examinations leading to board certification or licensure shall be conducted using board approved psychomotor examination procedures.

(3) Upon submission of all documents required by [subsection (2) of] this section for courses or psychomotor testing that lead to certification by The National Registry of EMTs and licensure or certification by [the office of] the board, the TEI shall be assigned a course or psychomotor testing number or other identifier [to the

course].

(4) An EMS-TEI that fails to provide documents as required by subsection (2) of this section shall be subject to disciplinary action pursuant to KRS Chapter 311A up to and including revocation of the TEI. [An EMS-TEI shall notify the board office thirty (30) days prior to the start of a course. Failure to notify KBEMS shall violate this section of this administrative regulation and may subject the EMS-TEI to disciplinary action under KRS 311A.]

(5) A course [class] or psychomotor testing shall not commence until the EMS-TEI has obtained an identification code and notified the board as required in this section.

(6) A course or psychomotor testing that does not meet all requirements of this administrative regulation may [shall] not lead to certification or licensure for the EMS students enrolled in the course or psychomotor testing.

(7) An EMS-TEI shall notify the board within seven (7) days of any changes to the lead instructor of an initial course that leads to certification or licensure by the board.

(8) An EMS-TEI shall notify the board within seven (7) days of cancelation of an initial certification or licensure course.

(a) An EMS-TEI that cancels an initial certification or licensure course that is underway or planned shall fully refund all tuition and fees paid by the students in the course that are impacted by the course cancellation.

Section 8. Requirements for All Training and Education Courses. (1) All EMS educational programs in Kentucky that lead to EMS Provider certification by The National Registry of Emergency Medical Technicians (NREMT) and certification or licensure by the board shall: [All EMS training and education courses that lead to certification or licensure by KBEMS shall:]

(a) Comply with this administrative regulation;

(b) Not begin [commence] until the EMS-TEI has filed all documents required pursuant to Section 7 [(2)] of this administrative regulation;

(c) Not begin until the EMS-TEI has paid all fees required pursuant to 202 KAR 7:030;

(d) Use the National Emergency Medical Services Education Standards [—Instructional Guidelines] that are appropriate for the level of EMS provider course being offered;

(e) Teach students the Kentucky and National EMS Scope of Practice Models;

(f) Meet the course administrative and faculty requirements in this administrative regulation, if applicable, [and] as established by the NREMT [board] approved accrediting agency; and

(g) Use educators [lead instructors] certified by the board [KBEMS] as EMS educators who are minimally certified or licensed at the level of the offered course.

(h) An EMS-TEI shall ensure that all student course work including lectures, practical skills lessons, and clinical or field rotations for courses that lead to certification by the National Registry of EMTs and certification and licensure by the board be completed within thirty (30) days of the course completion date listed on the Course Notification Application. The board shall not accept any changes made to course completion documents listed in Section 7 of this administrative regulation if submitted less than thirty (30) days of the course completion date as listed on the Course Notification Application.

1. In exceptional circumstances, the EMS-TEI may submit a Final Course Roster of students approved by the EMS-TEI program director and medical director for course work extension required in Section 5 of this administrative regulation.

(i) The EMS-TEI director shall approve all students to test with the National Registry of EMTs within seven (7) days of successful completion of an initial certification course.

(2) The EMS-TEI may use an assistant instructor who is not a board certified educator to instruct no more than twenty-five (25) percent of the classroom education time [adjunct faculty] for initial certification or licensure courses, if the adjunct faculty:

(a) Meets one (1) of the requirements established in Section 13 of this administrative regulation; and

(b) Teach for no more than five (5) percent of the classroom education time for each EMS course without the supervision of

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~~the program coordinator or certified instructor present and available in the classroom.]~~

(3) The EMS-TEI shall maintain an instructor to student ratio of no more than 1:15 for [shall have additional skills educators for] classroom sessions where skills are practiced. These sessions shall not proceed without the presence of:

(a) A certified educator for the first ~~fifteen (15)~~ [ten (10)] students; and

(b) An additional educator or adjunct faculty for each one (1) to ~~fifteen (15)~~ [ten (10)] additional students. Additional adjunct faculty used shall:

1. Not be required to be certified as an EMS educator but shall be certified by the board as an EMS provider at or above the level for the course being taught; or

2. Be a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA); and

(4) The EMS-TEI program director and medical director shall approve any assistant instructor or adjunct faculty before the individual may assist in instruction. [and shall meet at least one (1) requirement established in Section 13 of this administrative regulation:]

(5)[(4)] The EMS-TEI shall have a medical director qualified pursuant to 202 KAR 7:801, who shall:

(a) Be employed by or under memorandum of understanding or a written contract with the EMS-TEI to serve as the medical director of the program;

(b) Be routinely available to the EMS-TEI to provide consultation regarding issues related to the training and education program;

(c) Participate in the approval of the didactic clinical and evaluation material and student progress review;

(d) Meets the applicable accrediting agency standards, policies, and guidelines;

(e) Provide medical consultation and guidance to the course faculty; and

(f) Certify[ies] the skills of all [of the] EMS-TEI[s] students who are enrolled in courses leading to EMS Provider certification by The National Registry of Emergency Medical Technicians (NREMT) or certification or licensure by the board.

(6) [(5)] An EMS-TEI shall maintain a written contractual affiliation agreement or memorandum of understanding [agreement] with each clinical rotation site that outlines, at a minimum, the responsibilities of each entity and reporting requirements for students involved in clinical and field training and education.

(7) [(6)] An EMS-TEI shall provide faculty from the EMS-TEI training and education program, clinical coordinators, or designees under contract with the EMS-TEI to oversee student activity while in the clinical or field internship setting.

(8) The EMS-TEI shall provide clinical or field preceptor training to all clinical or field preceptors overseeing students during clinical or field internship rotations.

Section 9. Emergency Medical Responder Training and Education Course Requirements. [Each Emergency Medical Responder (EMR) training and education course shall follow]:

(1) Each Emergency Medical Responder (EMR) training and education course shall:

(a) Include all training and education requirements established in KRS Chapter 311A, 202 KAR 7:201, and 202 KAR 7:701;

(b) Use the National Emergency Medical Services Education Standards – Emergency Medical Responder Instructional Guidelines for the duration of course including individual class segments; and

(c) Ensure student competency throughout the course by a nationally recognized independent validated examination measuring process.

(2) To be eligible for certification as an EMR, a student shall also receive instruction covering the National and Kentucky EMS Scope of Practice for an EMR.

(3) EMR candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:201.[All training and

education requirements established in KRS Chapter 311A and 202 KAR 7:201; and

(2) The National Emergency Medical Services Education Standards – Instructional Guidelines for duration of course and individual class segments.]

Section 10. Emergency Medical Technician Training and Education Course Requirements. (1) Each Emergency Medical Technician (EMT) training and education course shall:

(a) Include all training and education requirements established in KRS Chapter 311A, [and] 202 KAR 7:301, and 202 KAR 7:701; [and]

(b) Use the National Emergency Medical Services Education Standards – Emergency Medical Technician Instructional Guidelines for duration of course and individual class segments; and

(c) Ensure student competency throughout the course by a nationally recognized independent validated examination measuring process.

(2) To be eligible for certification as an EMT[EMTs], a student shall receive instruction covering the National and Kentucky EMS Scope of Practice for an EMT.

(3) Each student shall complete [a] clinical [or] and field rotation that meets the requirements for EMT education as determined by this administrative regulation, [and] including the National and Kentucky EMS Scope of Practice for an EMT student as approved by the applicable accrediting agency's minimum requirements.

(4) [(3)] The minimum requirements of clinical or field rotations for EMTs shall include [minimally]:

(a) [A] Clinical [or] and field rotations [consisting of at least twenty-four (24) hours] conducted at a [in a hospital emergency department, public health department, urgent treatment center, physician's office,] licensed ambulance service or other licensed health care facility selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards;

(b) Interviews and assessments [or] on a minimum of ten (10) patients with at least five (5) interviews and assessments conducted in a pre-hospital ambulance service setting; and

(c) Recording the patient history and [completing] assessment on a [prehospital] care report form for each of the ten (10) patients required in paragraph (b) of this subsection.

(5) [(4)] If a student fails to achieve the [a] goals established by [for] the EMS-TEI for the EMT education program, the EMS-TEI [CAO Officer or] program director and medical director shall require the student to repeat the failed portion of the EMT education program. [a clinical or field rotation experience.]

(6) [(5)] If a student is required to repeat a portion of the EMT education program, [a clinical or field rotation experience,] the [CAO or] program director and medical director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; [and]

(c) A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues[.]; and

(d) The notification to the student shall be in writing and signed and dated by all witnesses.]

(6) If additional time is required, the notification to the student shall be signed and dated by the student.]

(7) EMT candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:301.

(8) EMT students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.

Section 11. Advanced-Emergency Medical Technician Training and Education Programs.

(1) Advanced-Emergency Medical Technician (A[-]EMT) training and education course requirements. Each AEMT training

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and education course shall:

(a) Include all training and education [as required] pursuant to KRS Chapter 311A, 202 KAR 7:330, and 202 KAR 7:701; [and]

(b) Use the National Emergency Medical Services Education Standards – Advanced Emergency Medical Technician Instructional Guidelines for duration of course and individual class segments; and [Follow the National Emergency Medical Services Education Standards – Instructional Guidelines.]

(c) Ensure student competency throughout the course by a nationally recognized independent validated examination measuring process.

(2) To be eligible for certification as an A[-]EMT[s], a student shall:

(a) Complete a clinical and [or] field rotation that meets the requirements for A[-]EMT education as determined by this administrative regulation [and] including the National and Kentucky EMS Scope of Practice for an A[-]EMT student as approved by the applicable accrediting agency's minimum requirements.

(3) The minimum requirements of clinical and field rotations for A[-]EMTs shall include:

(a) Clinicals or field rotations [that occur] conducted at a licensed [in a hospital-emergency department, public health department, urgent treatment center, physician's office, advanced life support] ambulance service, or other licensed [advanced] health care facility[-] selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards;

(b) Interviews and assessments on [of] a minimum of twenty (20) [thirty-five (35)] patients, including at least ten (10) [fifteen (15)] interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a [prehospital] care report form for each of the twenty (20) [thirty-five (35)] patients required in paragraph (b) of this subsection.

(4) If a student fails to achieve the goal [a-goal] established by the EMS-TEI for the A[-]EMT education program, the EMS-TEI [chief administrative officer-or] program director and medical director shall require the student to repeat the failed portion of the AEMT education program. [a-clinical-or-field-rotation-experience.]

(5) If a student is required to repeat a portion of the AEMT education program, [a-clinical-or-field-rotation-experience,] the [CAO-or] program director and medical director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; [and]

(c) A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues[-]; and

(d) The notification to the student shall be in writing and signed and dated by the:

1. Student;

2. TEI Administrator;

3. Medical Director; and

4. Course Coordinator.

(6) AEMT candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:330. [If the EMS-TEI requires the student to complete additional ride-time, the EMS-TEI shall give the student written notification for the student to sign and date.]

(7) AEMT students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.

Section 12. Paramedic Training and Education Programs. Paramedic training and education course requirements.

(1) Each Paramedic training and education course shall:

(a) Include all training and education as required by this administrative regulation, KRS Chapter 311A, 202 KAR 7:401, 202 KAR 7:701, and any other Kentucky statutes or administrative regulations that place mandates upon paramedic students; [and]

(b) Use the National Emergency Medical Services Education Standards – Paramedic Instructional Guidelines for duration of course and individual class segments; and

(c) Ensure student competency throughout the course by a nationally recognized independent validated examination measuring process.

(2) To be eligible for licensure as a paramedic, a student shall complete a clinical or field rotation that meets the requirements for paramedic education as determined by this administrative regulation [and] including the National and Kentucky EMS Scope of Practice for a Paramedic student as approved by the applicable accrediting agency's minimum requirements.

(3) The minimum requirements of clinical or field rotations for paramedics shall include:

(a) Clinicals or field rotations [that shall be] conducted at [in] a [hospital-emergency department, public health department, urgent treatment center, physician's office,] licensed [advanced life support] ambulance service[-] or other licensed [advanced] health care facility selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards;

(b) [Interviews and assessments of a minimum of seventy-five (75) patients, including at least fifty (50) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a prehospital care report form for each of the [seventy-five (75)] patients required in [subsection (3)(b)-of] this section.

(4) If a student fails to achieve the [a] goals established by [for] the EMS-TEI for the EMS education program, the EMS-TEI [chief administrative officer-or] program director and medical director shall require the student to repeat the failed portion of the paramedic education program. [a-clinical-or-field-rotation-experience.]

(5) If a student is required to repeat a portion of the paramedic education program [a-clinical-or-field-rotation-experience], the [CAO-or] program director and medical director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; [and]

(c) A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues[-]; and

(d) The notification to the student shall be in writing and signed and dated by the:

1. Student;

2. TEI Administrator;

3. Medical Director; and

4. Course Coordinator.

(6) Paramedic candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:401. [If additional time is required to be completed for remediation, the EMS-TEI shall provide written notification of the additional time required and shall obtain a dated signature from the student.]

(7) Paramedic students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.

Section 13. Continuing Education. (1) Training and education courses provided to individuals [outside the roster of a licensed service and] that fulfill the continuing education requirements necessary to receive [recertify-or-renew] a certification or licensure from the board shall be provided by:

(a) An entity certified by the board [KBEMS] as an EMS-TEI;

1. An EMS-TEI CE which includes continuing education only shall pay an annual certification fee that shall not exceed fifty (50) dollars per certification period.

(b) An agency or department having contractual agreements with a board [KBEMS] certified EMS-TEI that is in good standing and not subject to disciplinary action;

(c) A board [KBEMS] approved symposia, state, national, or

international school;

(d) A board [KBEMS] approved or nationally accredited online [on-line] or distance education provider, but which shall not provide more than ninety (90) [fifty–(50)] percent of the total continuing education hours to fulfill the continuing education [CE] requirements for renewal pursuant to KRS Chapter 311A or 202 KAR Chapter 7; or

(e) ~~[A course that has been accredited by the board approved accrediting agency for continuing education.]~~ One or more of the approved continuing education entities listed below:

1. The Commission on Accreditation for Pre-Hospital Continuing Education (CAPCE);

2. Kentucky Board of Nursing;

3. Kentucky Board of Medical Licensure;

4. Kentucky Board of Respiratory Care;

5. Department of Homeland Security and all department components;

6. U.S. Fire Administration and all department components;

7. Kentucky Department of Criminal Justice (DOCJT);

8. Kentucky Cabinet for Health and Family Services; or

9. Courses approved by any State EMS Office that are offered and or completed outside the Commonwealth of Kentucky.

(2) Continuing education courses shall:

(a) Contain material relevant to the job specifications and professional development of EMS personnel; and

(b) Be conducted at an EMS level appropriate for the discipline of the participants.

(3) EMS-TEIs that provide continuing education shall provide course completion documentation by hardcopy or electronically to all participants that successfully complete the continuing education course. The course completion documentation shall contain at a minimum the following items:

(a) Official name of the EMS-TEI as listed in the EMS-TEI KEMSIS account and certification number of the EMS-TEI issued by the board;

(b) Name of primary instructor and state EMS office EMS provider number;

(c) Name of course;

(d) Breakdown of completed hours and subject categories instructed that meet the continuing education requirements established by 202 KAR 7:201, 202 KAR 7:301, 202 KAR 7:330, and 202 KAR 7:401; and

(e) Signature of one of the following EMS-TEI representatives:

1. Director;

2. Course coordinator; or

3. Course instructor.

Section 14. Continuing Education Instructor Requirements.

(1) The following persons shall be qualified to conduct continuing education courses for persons certified or licensed by the board [KBEMS]:

(a) An EMS provider [paramedic licensed by the board or] licensed or certified by the board that holds a continuing education educator credential [in another state];

(b) A physician (DO or MD) or Physician Assistant (PA) licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(c) A registered nurse (RN) or Advanced Practice Registered Nurse (APRN) licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(d) An EMS Educator certified in Kentucky; or

(e) An individual who is at least one (1) of the following and who shall be limited to teaching the specific subject approved by the EMS-TEI director and medical director:

1. Certified by a state or federal agency to teach or perform subject matter relevant to the National Emergency Medical Services Education Standards [~~–Instructional Guidelines~~] and National and Kentucky EMS Scope of Practice for a prehospital discipline;

2. Certified by a nationally recognized entity to provide EMS related training and education;

3. A presenter at a National or State Symposium accredited by an agency or other board [KBEMS] approved entity; or

4. A presenter approved by an EMS medical director who has specific expertise in an area of a prehospital discipline. [as uniquely qualified by experience or education; or

~~5. A presenter approved as being uniquely qualified by an emergency response agency's chief administrative officer.]~~

(2) The EMS-TEI or other approved contractual department or agency providing continuing education shall be required to:

(a) Maintain a roster, objectives, and outline for every continuing education course taught on file for a period of three (3) [seven (7)] years beyond the end date of each EMS Course; [and]

(b) Maintain all documentation to have met the applicable accreditation agency standards, policies, and guidelines established in this administrative regulation; and [.]

(c) Meet the requirements of this administrative regulation.

(3) If requested by the board, the EMS-TEI shall submit to the board [KBEMS] the required documents for EMS continuing education courses taught within the preceding three (3) [seven (7)] years that lead to re-certification or re-licensure by the board [KBEMS], including:

(a) Contractual agreements;

(b) The continuing education instructor [educator's] curriculum vitae or resume that includes at a minimum the educator's name, address, phone number, email address, education history, and employment history documenting the qualifications listed in Section 14(1) have been met;

(c) A completed Continuing Education[al Institution] Course Student Roster. The course roster shall include the participants name, signature, participant KEMSIS number, and board EMS credential held. If rosters are created or stored electronically, there shall be a verification of attendance component that can be verified by the board if requested; and

(d) Objectives, syllabi [and], outline, and a list of instructor resources used for each continuing education course.

Section 15. Pilot Programs. (1) A board certified TEI that is in good standing may apply for an Educational Pilot Program. [A licensed EMS provider agency may apply to KBEMS for authorization to perform a pilot program.]

(2) A pilot program shall involve specialized training and education, as well as associated procedures not otherwise provided for in 202 KAR Chapter 7.

(3) Educational Pilot Programs shall be subject to the provisions of 202 KAR 7: 565. [A licensed EMS provider agency seeking authorization for a pilot program shall submit a written request to the board.]

~~(4) An authorized entity approved by the board to conduct a pilot program shall agree in writing:~~

~~(a) To submit periodic reports related to the progress of the pilot program; and~~

~~(b) To abide by the board established requirements for the pilot program.~~

~~(5) An individual otherwise certified or licensed by the board who successfully completes an approved pilot program shall perform the procedures relevant to the training and education received in the pilot program subject to protocols established by the medical director for the pilot program.~~

~~(6) The board may establish pilot program limitations on:~~

~~(a) The geographic area or service location where the procedure may be performed; and~~

~~(b) The performance of the procedure subject to a:~~

~~1. Specific and defined event;~~

~~2. Disaster; or~~

~~3. Designated directive.~~

~~(7) The board may authorize the use of physicians or other medical professionals to supervise and monitor the training and education of students involved in a pilot program.~~

~~(8) The board may restrict or limit actions that involve the performance of an invasive procedure or the administration of medication subject to:~~

~~(a) Required physician or medical director oversight; or~~

~~(b) The use of protocols that have been submitted to the board for review and approved by the state medical advisor and the board.]~~

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Section 16. EMS Educators. (1) An EMS Educator may be certified at the following levels:

(a) EMR Educator, which certifies the individual to teach EMR initial certification and continuing education courses [Level I – EMR Educator, which certifies the individual to teach EMR courses or EMR continuing education];

(b) EMT Educator, which certifies the individual to teach EMR and EMT initial certification and continuing education courses; [Level II – EMT Educator, which certifies the individual to teach EMT and EMR courses or EMT and EMR continuing education; or]

(c) AEMT Educator, which certifies the individual to teach EMR, EMT, and AEMT initial certification and continuing education courses; [Level III – Advanced Educator, which certifies the individual to teach EMR, EMT, A-EMT, and paramedic courses or continuing education.];

(d) Paramedic Educator, which certifies the individual to teach EMR, EMT, AEMT, and Paramedic initial certification and continuing education courses; and [Level III-R – Registered nurses and physicians who are not currently certified as an EMT, A-EMT, or paramedic shall only be certified as Level III instructors who teach A-EMTs or paramedics.];

(e) CE Educator, which certifies the individual to teach continuing education courses at or below the level of EMS provider certification or license issued by the board.

(2) Depending on the level of certification sought, an applicant for certification as a Kentucky EMS educator shall:

(a) Already hold a certificate or license in Kentucky as an Emergency Medical Responder (EMR), an Emergency Medical Technician (EMT), an Advanced Emergency Medical Technician (AEMT), or a ~~P~~paramedic;

1. Hold a license in Kentucky or another state as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA);

(a) A Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA); shall be considered an advanced EMS provider at the paramedic level only for the purpose of credentialing the individual as an EMS educator.

(b) Not be issued a certificate as an EMS educator for a level of instruction higher than their EMS provider certification or license; ~~[-]~~

(c) Have successfully completed:

1. The National Association of EMS Educators Emergency Medical Services Education Standards [~~– Instructional Guidelines~~] for Educating EMS ~~Instructors [educators]~~ course; or

2. An ~~[KBEMS–]~~ approved EMS educator course that meets the objectives of the [~~National Highway Traffic Safety Administration (NHTSA)~~] National Highway Traffic Safety Administration National Guidelines for Educating EMS Instructors and The National Emergency Medical Services Education Standards which [~~and~~] is designed to represent a common core for teaching knowledge and skills to assist in the education of adult learners; or

3. Has completed one of the EMS educator courses listed below: [A Bachelor's Degree or higher in education;]

(a) International Fire Service Training Association (IFSTA) Fire Instructor Course;

(b) Eastern Kentucky University's EMC 440 EMS Instruction Course; or

(c) An instructor course accepted by one of the below entities that is equivalent to the EMS educator course objectives found in the U.S. Department of Transportation / National Highway Traffic Safety; or

4. Holds an unrestricted and current license or certification as a teacher or educator through a state board of education in the U.S.

(d) [Have been certified or licensed for a minimum of four (4) years as an EMS provider at the same level or at a higher level for which the applicant seeks to become an EMS educator;

(e) Provide documentation that two (2) years of the four (4) years' experience required in this section is experience providing care with an EMS organization that complies with the requirements of KRS Chapter 311A or 202 KAR Chapter 7.

(f) Provide documentation using the KBEMS Lecture and Skill Verification Form that the applicant has assisted with a course that meets the following requirements:

1. The board has approved the course as leading to certification or licensure;

2. Assistance with the course has been under the supervision of a board-certified EMS educator through a board-certified EMS-TEI with the approval of the program director and medical director [~~who attests using the board-approved Certified Educator form that the educator has served as a course coordinator or lead educator for at least three (3) separate courses and who has not been subject to disciplinary action or reprimand by the board pursuant to KRS Chapter 311A within the past thirty-six (36) months]; and~~

3. The ~~courses[course]~~ in which the applicant can [will] assist to meet the requirements of Section 16(3) of this administrative regulation shall be in a board-approved initial course at or below the level of educator the applicant is seeking. [~~is at the same level of EMS educator the applicant is seeking;~~]

a. Continuing education courses shall not be accepted to meet the requirements in this section of this administrative regulation;]

(g) ~~Provide evidence of completion of a board-sponsored orientation program;]~~

(e) ~~[(h)]~~ Submit a completed: [EMS Responder Application and pay all established fees]

1. CE Educator Initial Application;

2. EMR Educator Initial Application;

3. EMT Educator Initial Application;

4. AEMT Educator Initial Application; or

5. Paramedic Educator Initial Application;

(f) Pay all fees pursuant to 202 KAR 7:030; and

(g) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

1. National in scope for an applicant not currently certified or licensed at any level in Kentucky;

2. Statewide in scope for an applicant with current certification or licensure in Kentucky;

3. Less than six (6) months old when the applicant submits to the board all requirements for Educator certification; and

4. Provided by a vendor that has been contracted through the board.

(h) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(3) [~~If applying to become a Level I or II~~] Applicants applying for EMR, EMT, AEMT or Paramedic Educator certification shall:

(a) [~~Be certified minimally as an EMT to teach EMTs or EMRs and minimally certified as an EMR to teach only EMRs;~~]

(b) Submit documented proof on the Lecture and Skills Verification Form that the applicant:

1. Completed a minimum of five (5) presentations meeting the objectives of the National Emergency Medical Services Education Standards for Educating EMS Instructors [~~– Instructional Guidelines and EMS Scope of Practice Model National education [for EMT or EMR] as applicable for level of certification]; and~~

2. Demonstrated skills from at least five (5) subjects meeting the objectives of the National Emergency Medical Services Education Standards for Educating EMS Instructors, [~~– Instructional Guidelines and EMS Scope of Practice Model National education for EMT-EMT or EMR as applicable for level of certification;~~

3. Completed all presentations and all skills demonstrations on different topics for a total of ten (10) separate topics; and

4. Attended a minimum of fifty (50) percent of clock hours of the course; and]

(4) Applicants applying for CE [~~If applying to become a Level III~~] Educator shall:

(a) [~~Be certified as a paramedic or higher; and~~

(b) Present documented proof of completing a nationally recognized or EMS-TEI instructor course. [instruction in – a minimum of fifty (50) classroom clock hours in a minimum of five (5) different subject areas that shall include instruction in

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pharmacology, cardiac emergencies, and traumatic injuries,] meeting the objectives of the National Emergency Medical Services Education Standards Instructional Guidelines and EMS Scope of Practice Model for paramedic education.;

(5) The expiration date of an EMS educator certification shall correspond to those established in KRS Chapter 311A and 202 KAR Chapter 7. [

(6) Documented proof of the educator's experience shall be submitted on the Educator Practical Requirements form.];

Section 17. Renewal of EMS Educator Certification. (1) An EMS educator shall be eligible to renew the EMS educator certification if the applicant for renewal:

(a) Has maintained state certification or licensure as an EMS provider or as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA); at a level equal to or greater than the level at which they are certified as an EMS educator;

(b) Has submitted to the board [written] evidence of completion of all training and education pursuant to [as required by] KRS Chapter 311A;

(c) During the preceding two (2) years, has been actively engaged in instruction and obtained [a minimum of fifty-two (52) contact hours that include] at least four (4) [eight (8)] hours [contact hours] on topics related to methods of instruction (MOI); [The eight (8) relevant to MOI:

1. May include a board approved and required educator update; and

2. The chief administrative officer of the EMS-TEI employing the instructor shall provide proof of the courses or contact hours if requested to do so in an audit by the board;]

(d) Is not subject to discipline pursuant to KRS Chapter 311A;

(e) Has paid fees pursuant to [required by] 202 KAR 7:030; and

(f) Has submitted to the board a completed and signed Educator Renewal [EMS-Responder] Application.

(2) The EMS educator shall maintain all training and education documentation outlined in this administrative regulation for two (2) [four (4)] years from the date of completion.

(3) The board [KBEMS] office may audit an EMS educator's continuing education and EMS provider continuing education records.

Section 18. EMS Educator reinstatement. (1) An EMS Educator whose certification has lapsed [for a period not exceeding five (5) years] may reinstate [his certificate]. To reinstate a certificate, the EMS educator shall submit:

(a) A completed; [EMS-Responder Application;]

1. CE Educator Reinstatement Application;

2. EMR Educator Reinstatement Application;

3. EMT Educator Reinstatement Application;

4. AEMT Educator Reinstatement Application; or

5. Paramedic Educator Reinstatement Application;

(b) Evidence of at least four (4) [sixteen (16)] hours of training in methodology of instruction (MOI); and

(c) [Written evidence of completion of a board-sponsored EMS Educator orientation course; and

(d)] Payment of the reinstatement fee pursuant to [as established in] 202 KAR 7:030; [;

(d) Evidence of previous certification as an EMS Educator in Kentucky; and

(e) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

1. National in scope for an applicant not currently certified or licensed at any level in Kentucky;

2. Statewide in scope for an applicant with current certification or licensure in Kentucky;

3. Less than six (6) months old when the applicant submits to the board all requirements for Educator certification; and

4. Provided by a vendor that has been contracted through the board.

(h) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the

background check.];

(2) An EMS Educator whose certification has lapsed for a period exceeding five (5) years shall seek certification as an initial applicant.];

Section 19. Transition for Currently Certified Educators. (1) An educator certified prior to the effective date of this administrative regulation [after October 2012] shall be transitioned as follows:

(a) [(1)] Level I Educator shall be certified as an EMR Educator [EMS instructors shall be certified as Level I educators];

(b) [(2)] Level II Educator shall be certified as an EMT Educator [Instructors shall be certified as Level II Educators];

(c) [(3)] Level III Educator shall be certified as a Paramedic Educator [Currently certified Level III Instructors shall be certified as Level III educators];

(d) [(4)] [Level I and Level II shall be certified as Level I and Level II educators]; and [

(5) Level III instructors currently licensed as paramedics shall be certified as Level I, Level II, and Level III educators; and

—[(6)] Level III R Educator shall be certified as Level III Educator. [III instructors currently licensed as RNs or physicians shall be certified as Level III R educators.];

Section 20. EMS Educator Reciprocity. (1) A person certified as an EMS Educator [instructor] in another state or US territory shall be eligible for Kentucky EMS Educator [instructor] certification upon [demonstrating];]

(1) Evidence of certification or licensure as an EMS provider for a minimum of four (4) years at the same level or at a higher level for which they are applying to be a Kentucky EMS educator;

(2) Proof of four (4) years' educational experience in another state or territory;]

[(3)] (a) Submission of a completed; [EMS-Responder Application;]

1. CE Educator Reciprocity Application;

2. EMR Educator Reciprocity Application;

3. EMT Educator Reciprocity Application;

4. AEMT Educator Reciprocity Application; or

5. Paramedic Educator Reciprocity Application;]

(4) Evidence of at least sixteen (16) board-approved hours of training in methodology of instruction (MOI);

(5) Written evidence of completion of a board-sponsored EMS Educator orientation course;] and

(b) [(6)] Payment of the educator fee pursuant to [as established in] 202 KAR 7:030;

(c) Submission of proof that the applicant is certified as an EMS educator in another state or US territory;

1. The applicant may only apply for educator certification at the same level of Educator certification currently held in another state or U.S. territory.

(d) Submission of certification or license by the board as an EMS provider or license as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA); and

(e) Submission to a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

1. National in scope for an applicant not currently certified or licensed at any level in Kentucky;

2. Statewide in scope for an applicant with current certification or licensure in Kentucky;

3. Less than six (6) months old when the applicant submits to the board all requirements for Educator certification; and

4. Provided by a vendor that has been contracted through the board.

5. An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.];

Section 21. EMS Educator Temporary Certification.

(1) An EMS educator applicant holding EMS educator certification or licensure from another state or US territory may be granted a temporary certification in Kentucky upon submission of

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the EMS Responder Application.

(2) A temporary card shall not be valid for more than one (1) year.

(3) At the end of one (1) year, an applicant for reciprocity who has not completed the requirements established in Section 18 of this administrative regulation shall not be eligible for an extension or renewal of the temporary certification period.

(4) An Applicant failing to meet the time limit for obtaining certification through reciprocity shall seek certification as a Kentucky EMS Educator by completing all requirements for initial certification.

Section 22. EMS Evaluator.

(1) An applicant for certification as an EMS evaluator shall:

(a) 1. Be currently certified as a Level I, Level II, or Level III EMS educator; or

2. Hold current unrestricted licensure in a state as a physician;

(b) Have completed a board-approved evaluator training program;

(c) Have a minimum of two (2) years' patient care experience prior to serving as an evaluator;

(d) Submit a completed EMS Responder Application; and

(e) Have paid all fees required by 202 KAR 7:030.

(2) The certification period of an EMS evaluator shall be contemporaneous with the expiration date of a certificate or license issued by the board, the KBN or KBML, or the state that issues his or her license.

(3) An EMS evaluator shall be certified as:

(a) Level I, which qualifies the evaluator to assess EMR candidates for certification;

(b) Level II, which certifies the evaluator to assess EMT and EMR candidates for certification; or

(c) Level III, which certifies the individual to evaluate paramedic, EMT, AEMT, and EMR candidates for certification or licensure. A licensed physician or registered nurse who is not also a licensed or certified EMS provider shall evaluate paramedics only. A person certified as an AEMT may evaluate AEMTs, EMTs, and EMRs.

(4) An Individual shall not be endorsed as an EMS evaluator at a level greater than the level at which certified or licensed as an EMS educator.

Section 23. Renewal of EMS Evaluator Endorsement. A person who holds an endorsement as an EMS evaluator shall be eligible to renew the EMS evaluator endorsement if the individual:

(1) Maintains current state certification or licensure as a provider;

(2) During the certification period, participates in a minimum of two (2) separate evaluations [on two (2) separate dates] or attends a board-sponsored evaluator class;

(3) Is not subject to discipline pursuant to KRS Chapter 311A;

(4) Submits to the board a completed EMS Responder Application; and

(5) Pays all fees required by 202 KAR 7:030.]

Section 21 [24]. Educator [and Evaluator] Oversight. The board [KBEMS] may conduct ~~unscheduled~~ [scheduled or, if part of an official investigation, ~~unscheduled~~] visits to an EMS educator's classroom or to an EMS psychomotor examination [evaluation] site to verify compliance with KRS Chapter 311A and 202 KAR Chapter 7, instructional quality, and evaluative standards required by this administrative regulation.

Section 22 [25]. Incorporation by reference. (1) The following material is incorporated by reference:

(a) "Training and Educational Institution (TEI) Application in KEMSIS", 2019 [KBEMS-E44,] July [2012];

(b) "Course Notification Application in KEMSIS", July 2019 [KBEMS-E22, September 2012];

(c) "Initial Educational [Institution] Course Roster", July 2019 [KBEMS-E23, September 2012];

(d) "National Emergency Medical Services Education Standards[—Instructional Guidelines]", National Highway Traffic

Safety Administration [Association], DOT HS 811 077A, January 2009;

1. "National Emergency Medical Services Education Standards-Emergency Medical Responder Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077B, January 2009;

2. "National Emergency Medical Services Education Standards-Emergency Medical Technician Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077C, January 2009;

3. "National Emergency Medical Services Education Standards-Advanced Emergency Medical Technician Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077D, January 2009;

4. "National Emergency Medical Services Education Standards-Paramedic Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077E, January 2009.

(e) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration [Association], DOT HS 810 657, February 2007;

(f) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019 ["EMS Responder Application", KBEMS-E1, September 2012];

(g) "National Guidelines for Educating EMS Instructors", National Highway Traffic Safety Administration, August 2002 ["Certified Educator", KBEMS-E24, September 2012]; [and]

(h) CoAEMSP Interpretations of the Standards and Guidelines", February 2019 ["Educator Practical Requirements", KBEMS-E20, July 2012];

(i) "Lecture and Skills Verification Form", July 2019;

(j) "Final Educational Course Roster", July 2019;

(k) "Continuing Education Course Student Roster", July 2019;

(l) "Course Change Notification Application" in KEMSIS, July 2019;

(m) "Psychomotor Exam Application" in KEMSIS, July 2019;

(n) "Comprehensive Skill Evaluation Report", July 2019;

(o) "CE Educator Initial Application" in KEMSIS, July 2019;

(p) "EMR Educator Initial Application" in KEMSIS, July 2019;

(q) "EMT Educator Initial Application" in KEMSIS, July 2019;

(r) "AEMT Educator Initial Application" in KEMSIS, July 2019;

(s) "Paramedic Educator Initial Application" in KEMSIS, July 2019;

(t) "CE Educator Reciprocity Application" in KEMSIS, July 2019;

(u) "EMR Educator Reciprocity Application" in KEMSIS, July 2019;

(v) "EMT Educator Reciprocity Application" in KEMSIS, July 2019;

(w) "AEMT Educator Reciprocity Application" in KEMSIS, July 2019;

(x) "Paramedic Educator Reciprocity Application" in KEMSIS, July 2019;

(y) "CE Educator Reinstatement Application" in KEMSIS, July 2019;

(z) "EMR Educator Reinstatement Application" in KEMSIS, July 2019;

(aa) "EMT Educator Reinstatement Application" in KEMSIS, July 2019;

(bb) "AEMT Educator Reinstatement Application" in KEMSIS, July 2019;

(cc) "Paramedic Educator Reinstatement Application" in KEMSIS, July 2019; and

(dd) "Educator Renewal Application" in KEMSIS, July 2019.

(2) This material may be inspected, [copies, or] obtained, or copied, subject to applicable copyright law, at the [Kentucky Community and Technical College,] Office of[for] the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505, by appointment [300 north Main Street, Versailles, Kentucky 40383], Monday through Friday, 8[8-30] a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: February 13, 2020

FILED WITH LRC: June 12, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2020 at 1:00 p.m. Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey S. Walther, Legal Counsel, Kentucky Board of Emergency Medical Services, Walther, Gay & Mack, PLC; 163 East Main Street, Suite 200, Lexington, Kentucky 40588, phone (859) 225-4714, fax (859) 225-1493, email: administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey S. Walther

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation establishes requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also establishes standards for the certification and recertification of emergency medical services educators and providers.

(b) The necessity of this administrative regulation: KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation is necessary to establish requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establish standards for the certification and recertification of emergency medical services educators and providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation conforms to the content of these statutes by establishing requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establishing standards for the certification and recertification of emergency medical services educators and providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of

emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation will assist in the effective administration of these statutes by establishing requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establishing standards for the certification and recertification of emergency medical services educators and providers.

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

(a) How the amendment will change this existing administrative regulation: This amendment will modify and update educational mandates for all levels of EMS professionals entering the field, as well as regulatory requirements for EMS training and educational institutions, educators, and renewal requirements for educators and training and educational institutions.

(b) The necessity of the amendment to this administrative regulation: Educational standards for the EMS professions have been updated across the nation over the last few years. The amendments to this administrative regulation align with nationally accepted educational standards and training center requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025, KRS 311A.110, KRS 311A.115, KRS 311A.120, KRS 311A.125, KRS 311A.130 by establishing requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establishing standards for the certification and recertification of emergency medical services educators and providers.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.020 requires the board to establish procedures and processes for committees and subcommittees. This administrative regulation will assist in the effective administration of KRS 311A.025, KRS 311A.110, KRS 311A.115, KRS 311A.120, KRS 311A.125, KRS 311A.130 by establishing requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establishing standards for the certification and recertification of emergency medical services educators and providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, emergency medical services educators, and emergency medical services personnel will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies shall conform to the procedures and standards established by this administrative regulation regarding approval as an Emergency Medical Service Training and Education Institute (EMS-TEI) and certification and recertification as emergency medical services educators and providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from enhanced educational delivery guidance.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding source is necessary 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: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, emergency medical services educators, and emergency medical services personnel will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation establishes requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also establishes standards for the certification and recertification of emergency medical services educators and providers.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(Amendment)

501 KAR 6:220. Treatment for sex offenders.

RELATES TO: KRS 17.500, 17.550-17.576, 17.991, 197.010
STATUTORY AUTHORITY: KRS 17.564

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.564 authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish the minimum requirements for treatment of sex offenders. This Administrative regulation establishes minimum treatment [requirements] for providers.

Section 1. Definitions. (1) "Adjunctive therapy" means additional interventions or programs that enhance gains made in evidence based treatment sessions, directly target criminogenic risk factors, and may include interventions that are considered promising as well as evidence based.

(2) "Approved provider" is defined in KRS 17.550(3).

(3)[(2)] "Board" is defined in KRS 17.550(1).

(4) "Criminogenic needs" means factors that when targeted in treatment can reduce sexual re-offending. [

(3) "Community standards of care" means the standards of care generally accepted by sex offender treatment professionals within the Commonwealth of Kentucky and taking into account the general standards of care for the mental health profession for which the approved provider is licensed or certified.]

(5)[(4)] "Department" is defined in KRS 197.010(3).

(6) "Dynamic risk factors" means factors that if targeted and changed during treatment can result in a reduction in sexual re-offending and research has proven to reduce sexual recidivism.

(7) "Evidence based standards of care" means standards and practices based on the best available clinical scientific research or evidence for treatment of sex-offenders that take into account the offender's current clinical state and circumstances that may influence treatment gain and are generally accepted.

(8) "Non-criminogenic needs" are factors that if targeted can assist with removing obstacles to effectively targeting criminogenic factors, for example, self-esteem, fear of punishment.

(9) "Responsivity factors" means factors that impact an offender's ability to begin, engage in, and complete treatment and can interfere with the ability of the offender to respond to treatment.

(10) "Risk" means the risk of sexual reoffending.

(11) "Risk assessment tool" means a validated instrument designed to measure risk of sexually reoffending.

(12) "Session" means at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session.

(13) "Static factors" means factors that do not change but predict future sexual re-offending.

(14) "Stages of change" means the change process occurs gradually over time and includes levels or stages as follows:

(a) "Precontemplation" means the individual does not intend to make a change in the behavior;

(b) "Contemplation" means the individual has an awareness of the problem and may consider the pluses and minuses of change.

(c) "Preparation" means the individual intends to take action within one (1) month and may make small behavioral changes;

(d) "Action" means the individual modifies the problem behavior for one (1) to six (6) months.

(e) "Maintenance" means the behavior change extends from six (6) months and the individual works to prevent relapse. [

(5) "Treatment-services" is defined in KRS 197.420(2)(b).]

Section 2. General Procedures for Treatment of All Sex Offenders. (1) Treatment shall conform to evidence based [community] standards of care, and shall include:

(a) A diagnosis from one (1) of the manuals below, using the edition that is in effect at the time of diagnosis:

1. Diagnostic and Statistical Manual (DSM); or
2. International Statistical Classification of Diseases and Related Health Problems (ICD); and

(b) A written treatment plan based on a comprehensive, psycho-sexual evaluation consistent with the risk, need and responsivity (RNR) principles or RNR model of assessment and treatment. The plan[, which] shall include:

1. Goals and objectives consistent with the individual client's risk level considering:
 - a. Static factors;
 - b. Dynamic factors;
 - c. Criminogenic and non-criminogenic needs;
 - d. Responsivity factors; and
 - e. Stage of change; and
2. Systems and modalities of treatment and the rationale therefor.

(2) Treatment shall be conducted using a cognitive behavioral approach including individual or group sessions[in a psychotherapy format].

(3) Treatment may utilize psychoeducational and other adjunctive therapy components if indicated.

(4) Prior to providing treatment, an approved provider shall:

(a) Obtain written informed consent for treatment from the offender;

(b) Contact the offender's supervising probation and parole officer to discuss the offender and obtain offender information;

(c) Obtain or make a good faith effort to obtain the offender's mental health records; and

(d) Submit a general treatment curriculum to the board that includes the required elements in Sections 2 and 3[Section 3(1)] of this administrative regulation. If the approved provider intends to treat an offender who has already completed a sex offender treatment program, then the approved provider shall also submit a treatment curriculum that includes the required elements in Section 4[(2)] of this administrative regulation. If an approved provider [proposes] changes the [in his] submitted treatment curriculum, the approved provider shall submit a treatment curriculum with the changes to the board [for approval].

(5) An approved provider shall:

(a) Provide psychological, [or] pharmacotherapy services, [or] testing or adjunctive therapy as needed or make the appropriate referral and act as liaison for the provisions[provision] of services;

(b) Provide treatment consistent with current professional literature which minimizes the risk of reoffending and emphasizes community safety;

(c) Maintain an individual record which shall include documentation of the offender's attendance and evaluative progress notes;

(d) Obtain a release of information signed by the sex offender, which allows the approved provider to release information to probation and parole personnel responsible for the sex offender's supervision and the Sex Offender Risk Assessment Advisory Board;[:]

(e) Notify the offender's supervising probation and parole officer in writing if the offender fails to attend a treatment session or fails to make a good faith effort to participate in the treatment;

(f) Provide the Required Monthly Progress Report to the supervising probation and parole officer each month;

(g) Cooperate fully with the probation and parole supervision team responsible for a sex offender under the approved provider's treatment;

(h) Prepare a treatment summary at discharge from treatment and

(i) Provide written notice of the sex-offender's discharge from treatment and the reasons[reason] for discharge to the supervising probation and parole officer within ten (10) days of discharge.

Section 3. Procedures for Treatment of Sex Offenders Who Have Not Completed a Sex Offender Treatment Program. If a sex offender has not completed a sex offender treatment program, an approved provider shall:

- (1) Use a treatment curriculum which, at a minimum, shall

include:

(a) Integrated treatment services as [may be] necessary to meet the sex offender specific and mental health needs of the individual offender including[:]

1. Sex offender specific treatment:

a. The cycle of sexual abuse;

b. Human sexuality;

c. Deviant arousal and its reduction;

d. Cognitive restructuring;

e. Relapse prevention;

f. Partner and family interactions and support, if applicable;

g. Victim empathy awareness; and

h. Relationship skills; and

2. Mental health treatment:

a. Substance abuse;

b. Mental health including personality disorder;

c. Domestic violence;

d. Anger management;

e. Mood problems including depression and anxiety;

f. Trauma;

g. Psychotropic medication; and

h. Pornography addiction;

(b) Treatment dosage based on risk level;

(c) An emphasis on motivating the offender to move through the stages of change and towards acceptance of responsibility [by the offender] for present and past sexual offending behavior; and

(d) [e)] Gender and culture specific programming;[: and

(d) Education of the offender in:

1. The cycle of sexual abuse;

2. Human sexuality;

3. Deviant arousal and its reduction;

4. Cognitive restructuring;

5. Relapse prevention;

6. Partner and family interactions and support, if applicable;

7. Victim empathy awareness; and

8. Relationship skills; and]

(2) For a low risk offender, provide between sixty (60) to 100 hours of face-to-face, evidence based, cognitive behavioral treatment sessions with at least thirty (30) hours in the first year. If denial or other risk-need-responsivity factors are present in a low risk offender, treatment hours may be increased to focus on treatment readiness or other responsivity factors identified by the treatment provider;

(3) For a medium risk offender, between 160 to 200 hours of face-to-face, evidence based, cognitive behavioral treatment sessions with at least eighty (80) hours in the first year. If denial or other risk-need-responsivity factors are present in the medium risk offender treatment hours may be increased to focus on treatment readiness or other responsivity factors identified by the treatment provider; and

(4) For a high risk offender, provide between 400 to 540 hours of face-to-face evidence based, cognitive behavioral treatment sessions with at least 200 hours in the first year. If denial or other risk-need-responsivity factors are present in the high risk offender, treatment hours may be increased to focus on treatment readiness or other responsivity factors identified by the treatment provider. [Provide a minimum of eighty (80) face to face sessions of at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session for at least twenty-four (24) months with a minimum of forty (40) face-to-face sessions conducted during the first twelve (12) months.]

Section 4. Procedures For Treatment of Sex Offenders Who Have Completed a Sex Offender Treatment Program. (1) If a sex offender has completed a sex offender treatment program, an approved provider shall:

(a) Obtain documentation from the sex offender treatment program showing completion of the program;

(b) Assess and document whether the offender can demonstrate acceptable levels of skills and knowledge of treatment areas listed in Section 3(1)(a)(1)(e)] of this administrative regulation;

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(c) Assess the offender's current risk level using risk assessment tools;

(d) Based on the offender's level of risk and need, determine which of the following is required:

1. A full treatment program

2. A partial treatment program to address sex offender specific treatment concerning missing skills or knowledge; or

3. Maintenance sessions including supportive counseling; and

(e) Implement a treatment program that meets the following:

1. A full treatment program shall follow the requirements in section 3;

2. A maintenance program shall include:

a. For a low risk offender, forty-five (45) to sixty (60) hours of supportive counseling sessions focused on re-entry issues for a minimum of twelve (12) months and thereafter as needed, including booster sessions, unless the approved provider determines that this level of treatment may be detrimental to the offender based on current scientific treatment studies;

b. For a moderate risk offer:

(i) Provide a maintenance relapse prevention program with sessions two (2) times per month for the first year after release and then as needed, including booster sessions; and

(ii) Provide or refer for adjunctive therapies as needed; or

c. For a high risk offender:

(i) Provide a maintenance program with sessions one (1) time per week for the first year after release and thereafter as needed, including booster sessions; and

(ii) Provide or refer for adjunctive therapies as needed; or

3. For a partial treatment program, the approved provider shall determine the additional hours above the minimum hours required for a maintenance program needed to address the missing skills or knowledge and include those additional hours of treatment; and

(f) For a partial treatment program, document in the treatment file how the approved provider determined the skills and knowledge in required areas were met in prior treatment. [Require an offender to repeat the areas in Section 3(1)(d) of this administrative regulation in which he has not demonstrated competence; and

(d) Provide a minimum of fifty (50) face-to-face sessions of at least forty-five(45) minutes for an individual session or ninety (90) minutes for a group session for at least eighteen (18) months with a minimum of forty (40) face to face sessions conducted during the first twelve (12) months;]

(2) Based on the determination of whether a full, partial, or maintenance program is required, [If the offender has completed a sex offender treatment program,] the approved provider shall use a treatment curriculum which, at a minimum, shall target and include:

(a) Treatment dosage based on current risk level[Dynamic risk factors assessment];

(b) Treatment readiness and stage of change[Basic ownership, which means a component for offender responsibility for sexual offending behavior];

(c) Relapse prevention;

(d) Development of treatment partner relationship, including partner alert sessions;

(e) Collaborative development of a practical living skills plan;

(g) Existing sex offender specific treatment needs identified in (1)(b) integrated with the mental health needs as stated in Section 3(1)(a)(2); [

(f) Commitment to follow-up with adjunct therapies where needed, including the following: Substance abuse; Domestic violence; Anger management; and Psychotropic medications; and]

(h)[(g)] A plan for family and children reintegration options, if appropriate, and the victim approves.

(3) Reintegration.

(a) Reintegration with a victim shall not be considered [comply with treatment requirements] unless it is approved by the approved provider and the probation and parole officer.

(b) If the offender victimized a child, reintegration with other children shall not be considered [comply with treatment requirements] unless approved by the approved provider and the

probation and parole officer.

(c) The approved provider and probation and parole officer shall address at a minimum the following when considering reintegration of an offender with a child victim or other children:

1. Assessment of quality of parental relationship;

2. Assessment of victim's progress if participating in treatment;

3. Assessment of age and sex of child victims and offender potential for cross-over;

4[2]. Assessment of how the offender accessed prior child victims and similarities to situations and persons with whom he is currently considering to reside;

5[3]. Assessment of adult partner's knowledge and insight into offender's dynamics; and

6[4]. A written, gradual reintegration process plan.

Section 5. Incorporation by Reference. (1)The Sex Offender Risk Assessment Advisory Board form "Required Monthly Progress Report", 2020[4/12/05], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the sex offender treatment area at <https://corrections.ky.gov/Divisions/healthservices/Pages/sotp.aspx>.

This is to certify that the Sex Offender Risk Assessment Advisory Board approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a) as reflected by the signature below.

RANDY WHITE, Acting Commissioner

JENNIFER BOGARD, Chairperson

APPROVED BY AGENCY: May 15, 2020

FILED WITH LRC: May 26, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2020 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum treatment requirements for approved providers as authorized by the Sex Offender Risk Assessment Advisory Board.

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 17.554, and 17.564.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 17.564 permits the Sex Offender Risk Assessment Advisory Board to promulgate all reasonable administrative regulations not inconsistent with Chapter 17 that

are necessary to carry into effect the purposes of KRS 17.500 to 17.580 and 17.991. KRS 17.554 requires the Board to determine the nature of the required sex offender treatment. This administrative regulation establishes procedures and minimum treatment requirements for approved providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides treatment direction to approved providers who are authorized to provide court-ordered assessment and treatment for sex offenders.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises the treatment requirements based on newer research guidance.

(b) The necessity of the amendment to this administrative regulation: It provides revised minimum treatment requirements for offenders.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes give the board regulatory authority concerning the minimum requirements for treatment of sex offenders by approved providers.

(d) How the amendment will assist in the effective administration of the statutes: It provides research guided revisions for required sex offender treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 28 approved providers; the sex offenders that approved providers treat or evaluate, and may potentially affect circuit courts and probation and parole offices, if treatment issues become an issue for the court as releasing authority.

(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: Approved providers who treat offenders will have to submit a new treatment curriculum to the board and revise treatment areas that do not currently conform to the changes based on newer research.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost will be incurred by the Department of Corrections or the board. Approved providers will have to spend a number of hours revising their treatment curriculum and planning for treatment changes, but will not have out-of-pocket direct costs. Offenders may have treatment costs change with the curriculum changes. The cost will depend on the charges to them for each treatment session.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will provide research guided treatment to sex offenders.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board is administratively attached to the Department of Corrections (DOC). Funding is expected to be from the budgeted funds for the DOC.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish any fee.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation may impact circuit courts and the Department of Corrections through its probation and parole officers and approved providers who are employed by the department.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 17.550, 17.552, 17.554, 17.564

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The amendment does not increase administrative costs and the staff assistance provided from the Department of Corrections is expected to remain within the amount budgeted for the Department.

(d) How much will it cost to administer this program for subsequent years? The amendment does not increase administrative costs and the staff assistance provided from the Department of Corrections is expected to remain within the amount budgeted for the Department.

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

Revenues (+/-):

Expenditures (+/-):

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

701 KAR 8:020. Evaluation of charter school authorizers.

RELATES TO: KRS 158.070, 158.649, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.141

STATUTORY AUTHORITY: KRS 160.1596

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1596 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance. This administrative regulation establishes requirements for the competence, performance, and evaluation process for charter school authorizers.

Section 1. Definitions. (1) "Academically behind" means at risk of academic failure.

(2) "Achievement gap" is defined by KRS 160.1590(2) and KRS 158.649.

(3) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(4) "Applicant" is defined by KRS 160.1590(3).

(5) "Areas of exceptionality" means categories of disabilities of students with special needs.

(6) "At risk" means at risk of academic failure.

(7) "At risk of academic failure" means:

(a) Attendance at a school identified pursuant to KRS

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160.346(2) for targeted support and improvement [or intervention];

(b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;

(c) Current achievement two (2) or more grade levels below the student's age group;

(d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of the past four (4) school years;

(e) Consistent absence or tardy and absence twenty-five (25) or more unexcused "student attendance days," as defined by KRS 158.070, in the last two (2) school years and an overall grade average below a C;

(f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;

(g) Family history of dropping out or lack of family support for the student in the completion of school;

(h) Little or no participation in school cocurricular or extracurricular programs;

(i) Below grade level in reading or math skills;

(j) Indication of being socially isolated; or

(k) An applicant's definition for this term in the applicant's authorizer approved charter application, pursuant to KRS 160.1594(2).

(8) "Authorizer" or "public charter school authorizer" is defined by KRS 160.1590(13).

(9) "Authorizer's board of directors" means:

(a) The board of education for the local school district for an "authorizer" defined by KRS 160.1590(13)(a); and

(b) The boards of education that have collaborated to set up a regional public charter school for an "authorizer" defined by KRS 160.1590(13)(b).

(10) "Bilingual students" means students who are fluent in English and a foreign language, which can include American Sign Language.

(11) "Charter" means charter contract.

(12) "Charter application" is defined by KRS 160.1590(4).

(13) "Charter contract" or "contract" is defined by KRS 160.1590(5).

(14) "Charter school" means a public charter school.

(15) "Charter school board of directors" is defined by KRS 160.1590(6).

(16) "Cocurricular programs" means school programs that have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(17) "Comprehensive learning experiences" or "Expanded learning opportunities" means daily, rigorous learning experiences that build on a student's talents, challenge the student's skills and understandings, and develop the student's ability to reason, problem solve, collaborate, and communicate to prepare the student for success in postsecondary.

(18) "Conversion public charter school" or "conversion charter school" is defined in KRS 160.1590(7).

(19) "Days" means calendar days calculated pursuant to KRS 446.030.

(20) "Education service provider" is defined by KRS 160.1590(8).

(21) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(22) "Enrollment preference" means the priority of the student application from students pursuant to KRS 160.1591(5).

(23) "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.

(24) "Fiscal year" is defined by KRS 160.450.

(25) "Foreign entity" is defined by KRS 14A.1-070(10).

(26) "Gifted" means a gifted and talented student as defined by KRS 157.200(1)(n).

(27) "Governing board of the authorizer" means the authorizer's board of directors.

(28) "Governing body of the authorizer" means the authorizer's board of directors.

(29) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(30) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(31) "Local school district" is defined by KRS 160.1590(10).

(32) "Parent" is defined by KRS 160.1590(11).

(33) "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter schools identified for comprehensive support and improvement pursuant to KRS 160.346.

(34) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition for "interested person or entity" as defined by KRS 387.010(2) for an interested person or entity and with whom the student resides.

(35) "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.

(36) "Public charter school" is defined by KRS 160.1590(12).

(37) "Regional achievement academy" is defined by KRS 160.1590(15).

(38) "Regional achievement zone" is defined by KRS 160.1590(16).

(39) "School level" or "Level" or "Educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(40) "Secondary enrollment preference" means the priority of a resident student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school's capacity has not been exceeded.

(41) "Start-up public charter school" is defined by KRS 160.1590(17).

(42) "Student" is defined by KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(43) "Student attendance day" is defined by KRS 158.070(1)(e).

(44) "Students with special needs" or "Special needs students" means:

(a) Exceptional children and youth students, as defined in KRS 157.200, who are eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. for an individual education plan, as described in KRS 157.196, or an individual education program, as described in KRS 158.281; or

(b) Students who are eligible for services under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 794, to prevent substantial limitation of one (1) or more major life activities.

(45) "Substantial hardship" means a significant, unique, and demonstrable economic, technological, legal, or other impact on a local school district that impairs the district's ability to continue to successfully meet the requirements of educational programs or services for the district's students.

(46) "Superintendent" means the local school district employee tasked with the duties established in KRS 160.370.

(47) "Traditionally underperforming" means at risk of academic failure.

(48) "Unilateral imposition of conditions" means the authorizer has placed or attempted to place conditions or requirements that are not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(49) "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places or attempts to place:

(a) On the applicant in the authorizer's formal action

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approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(50) "Year", "academic year", or "school year" means school year as established in KRS 158.050.

Section 2. Policies and Procedures. (1) Pursuant to KRS 160.1594, an authorizer shall create policies and procedures governing the authorizer's performance of its duties under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and include in its policies and procedures:

(a) The authorizer's strategic vision for chartering, including a clear statement of any preference for a charter application that demonstrates the intent, capacity, and capability to provide comprehensive learning experiences or expanded learning opportunities to students identified in KRS 160.1594(2) or KRS 160.1592(19);

(b) Identification of any charter application preferences of the authorizer pursuant to KRS 160.1594(2);

(c) Information on the authorizer's performance contracting requirements, including:

1. Academic, financial, and operational measures, and the performance frameworks, that the authorizer has developed for public charter school oversight and evaluation and with which the authorizer shall evaluate the charter school's performance under the charter contract, in accordance with KRS 160.1594 and 701 KAR Chapter 8; and

2. Requirements for executing a contract with a charter school board of directors that articulates:

- a. The rights and responsibilities of each party regarding school autonomy;
- b. Funding;
- c. Administration and oversight;
- d. Outcomes;
- e. Measures for evaluating success or failure;
- f. Performance consequences; and
- g. Other material terms;

(d) The evidence the authorizer shall require, the evaluation the authorizer shall conduct using the performance framework, and other aspects of the authorizer's ongoing monitoring of the charter school including:

1. Ensuring a charter school's legally entitled autonomy;
 2. Protecting student's civil, disability, safety, and educational rights;
 3. Informing intervention, revocation, and renewal decisions; and
 4. Providing annual reports as required by KRS 160.1597(5);
- (e) The requirements for reporting to the public;
- (f) The authorizer's authority to intervene in charter schools, when and if necessary;

(g) Guidelines concerning the format and content essential for an applicant to demonstrate the capacities necessary to establish and operate a public charter school, pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(h) The timeline for submission, review, decision, and appeal for a charter application, and a request for renewal. An authorizer described in KRS 160.1590(13)(c) and (d) shall consult with the superintendent of the resident local school district if planning this timeline;

(i) A template of the assurances an authorizer shall require in a charter contract;

(j) The following evidence sufficiency requirements for the charter application:

1. The charter school board of directors' ability to meet the financial solvency and sustainability demands of their proposed budget;
2. Competent and timely charter school start-up and operation;
3. Foreseen and unforeseen closure; and
4. All debts and obligations during each fiscal year of the charter contract and during the entire contract term;

(k) The financial transparency requirements that shall apply to a charter school, including specific provisions regarding publication on the authorizer's website and the charter school's

Web site;

(l) The charter school closure protocol and requirements;

(m) A description of the authorizer's organizational capacity, including its commitment of human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(n) The authorizer's requirements for solicitation and evaluation of a charter application, including its implementation of a comprehensive application process that includes use of the Kentucky Charter School Application and Addendum, and rigorous criteria, and approval of only a charter application that demonstrates a strong capacity to establish and operate a charter school;

(o) The authorizer's charter renewal and revocation processes and rigorous criteria, including its design and implementation of a transparent and rigorous process that uses comprehensive academic, financial, and operational performance data to make merit-based renewal and revocation decisions; and

(p) The requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for an applicant, a board of directors, an education service provider, a charter school, and their employees.

Section 3. Standards of Authorizer Performance Generally. (1) Prior to authorizing a charter school, an authorizer as established in KRS 160.1590(13)(c) and (d) shall file the Notice of Intent with the Kentucky Board of Education.

(2) An authorizer shall restrict the expenditure of funds received as a result of charter authorization and oversight to the purpose of fulfilling authorizing obligations pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(3) Pursuant to KRS 160.1596(5)(e), an authorizer shall include in its report and place in a publicly accessible location on its website information on the following:

(a) The oversight and any services provided by the authorizer to the public charter schools under the authority of the authorizer;

(b) The authorizing functions provided by the authorizer to the public charter schools under its jurisdiction, including the operating costs and expenses of the authorizer as detailed in annual audited financial statements that conform to generally accepted accounting principles;

(c) All use of charter authorizing revenue including expenditures, contracts, and revenues, in the format required by the commissioner of education; and

(d) The reports that an authorizer is required to make pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) ~~The authorizer, or its designee for charter authorizing, shall participate in annual in-service training as follows:~~

(a) Pursuant to KRS 160.1594 and except as specified in Section 3(4)(b) of this administrative regulation, prior to evaluating a charter application, each [Each] authorizer or member of the authorizer's board of directors or governing board [of the authorizer] shall complete:

1. Twelve (12) ~~six (6)~~ hours of [annual] training, as approved by the Commissioner of Education, [for an authorizer or member with zero to eight (8) years of experience as an authorizer and eight (8) hours for an authorizer or a member with more than eight (8) years of experience as an authorizer; or
2. Competency-based annual in-service training;

(b) In-service training toward the board of education member training requirements of KRS 160.180 may also count toward this requirement, to the extent the requirements of both are met by the content of the training, and the training for this requirement] that shall include the following topics pertinent to [of] authorizer responsibility and charter school formation and operation:

1. Financial governance and transparency;
2. Conflict of interest;
3. Charter application;
4. Charter school contracting;
5. Charter school monitoring;
6. Charter school renewal, nonrenewal, and revocation;
7. Charter school closure;
8. Ethics;
9. Curriculum and instruction;
10. Educational services provided for special needs, at risk,

English learner, gifted, and other special population students; and

11. Physical restraint and seclusion of students; and

~~(b) [(e) The training shall be approved by the commissioner of education.] An authorizer or member of the authorizer's board of directors or governing board that completed all training requirements pursuant to Section 3(4)(a) of this administrative regulation in the immediately preceding twelve (12) months prior to receipt of a charter school application shall be exempt from completing training pursuant to Section 3(4)(a) of this administrative regulation prior to evaluating that charter school application.~~

(5) An authorizer shall submit to the department a written assurance of a charter school's compliance with the pre-operating requirements in this administrative regulation and in the charter contract before the opening of the charter school.

(6) An authorizer shall require the sharing of best practices between the charter school and the resident local school district.

Section 4. Standards of Authorizer Performance Concerning Charter Applications. (1) Pursuant to KRS 160.1591 and 160.1594(1)(e)2 and to the extent not prohibited by federal law, an authorizer shall not approve a charter application that is:

(a) From an applicant that is or includes:

1. A for-profit organization, or its designee;

2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A; or

(b) That has in the proposed board of directors:

1. A for-profit organization, or its designee;

2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A.

(2) An authorizer shall require a charter application to be submitted on the Kentucky Charter School Application and Addendum and may require additional information from the applicant.

(3) An authorizer shall publish a copy of a submitted charter application on its website within three (3) days of submission by the applicant to the authorizer.

(4) An authorizer shall provide a copy of a submitted charter application to the resident local school district superintendents and to any other authorizer of charter schools in that local school district within three (3) days of submission by the applicant to the authorizer.

(5) An authorizer established in KRS 160.1590(13)(a) or (b) shall provide a copy of a submitted charter application for a regional achievement academy within a regional achievement zone to the superintendents of the other local school districts of the regional achievement zone within three (3) days of submission by the applicant to the authorizer.

(6) An authorizer shall allow a resident local school district superintendent to file a letter with supporting evidence objecting to the approval of the charter application on the basis of the substantial hardship that may result for the students of the resident local school district who do not attend the charter school. An authorizer shall publish a copy of the letter and supporting evidence from the resident local school district superintendent on the authorizer's website within three (3) days of submission by the superintendent to the authorizer and the authorizer shall review this evidence prior to approving a charter application.

(7) An authorizer shall allow a resident local school district superintendent to file a letter of support for a charter application and shall publish a copy of the resident local school district superintendent letter on the authorizer's website within three (3)

days of submission by the superintendent to the authorizer.

(8) An authorizer shall require a resident local school district superintendent to provide information and evidence regarding the academic performance of the students identified in the charter application as the targeted student body or community. An authorizer shall publish a copy of this information on the authorizer's website within three (3) days of submission by the superintendent to the authorizer, to the extent not prohibited by confidentiality laws.

(9) An authorizer shall comply with the following requirements in reviewing the charter application:

(a) Request and secure a certificate of existence from the Secretary of State, pursuant to KRS 14A.2-130, for any business entity or its designee included in the applicant or in the proposed charter school board of directors; and

(b) If the applicant or the board of directors includes a foreign entity, request and secure a certificate of authorization for the foreign entity from the Secretary of State, pursuant to KRS 14A.2-140.

~~(10) [The department shall develop a charter application scoring rubric that an authorizer may utilize in reviewing a charter application.]~~

~~(11) [(14)] An authorizer shall require an applicant or proposed board of directors for a charter school to include in the charter application:~~

(a) Performance information, financial information, and closure information for any charter school under the applicant or board of directors;

(b) Details and documentation of the outreach the applicant or proposed board of directors has had with the students or community that is the focus of the charter application; and

(c) Details of whether the charter application replicates or substantially replicates:

1. A charter application that the applicant, the proposed board of directors, or another entity previously withdrew from consideration and the reasons the charter application was withdrawn;

2. A charter application that was rejected by an authorizer and the reasons the charter application was rejected; or

3. A charter school that was previously closed and the reasons for the closure.

~~(12) [(12)] An authorizer shall provide on the authorizer's website the names of all persons, and their roles, who are involved in the review of charter applications. Review of charter applications shall be conducted pursuant to the requirements of the Open Meetings Act, KRS 61.800 et seq.~~

~~(13) [(13)] An authorizer shall not approve a charter application that does not meet the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.~~

~~(14) [(14)] Within five (5) days of the authorizer's approval, the authorizer shall submit an approved charter application to the commissioner of education for review and approval in accordance with Section 5(11) of this administrative regulation.~~

Section 5. Standards of Authorizer Performance Concerning Charter Contracts. (1) Prior to negotiating a charter contract with a board of directors, an authorizer shall verify the charter school board of directors' registration as a non-profit business entity with the Kentucky Secretary of State pursuant to KRS Chapter 14A.

(2) An authorizer shall negotiate and enter a charter contract with a charter school board of directors in compliance with KRS 160.1590(5) and (6); 160.1591(2); 160.1592(3), (7), (8), (9), (10), (11), and (20); 160.1593(3); 160.1594(1); 160.1596(1); 160.1597(1), (2), and (6); 160.1598(1), (5), (6), and (7).

(3) An authorizer shall include pre-opening requirements or conditions in the charter contract as follows:

(a) An authorizer shall establish mutually agreed upon pre-opening requirements or conditions to:

1. Monitor the start-up progress of a newly approved public charter school;

2. Ensure that the charter school is prepared to open timely and smoothly on the date agreed; and

3. Ensure that the charter school meets all benchmarks related to facilities, health, safety, insurance, school personnel,

enrollment, curriculum and instruction, operations and fiscal management, governance, and other legal requirements for the charter school opening; and

(b) Failure by the charter school to comply with the pre-opening requirements or conditions may result in the immediate revocation of the charter contract and:

1. May result in the delay in the opening of the charter school by up to one (1) year if the authorizer does not determine that the charter school is more likely than not to close during the school year; or

2. Shall result in the delay in the opening of the charter school by up to one (1) year if the authorizer does determine that the charter school is more likely than not to close during the school year.

(4) An authorizer shall include in the charter contract with the charter school board of directors provisions for charter school financial solvency and sustainability, including:

(a) A requirement that no member of the charter school board of directors, no education service provider, and no charter school employee shall knowingly recommend and no member of the charter school board of directors shall knowingly vote for an expenditure in excess of the charter school's income and revenue of any fiscal year, as shown by the budget adopted by the charter school board of directors and approved by the authorizer;

(b) A requirement that a member of the charter school board of directors, an education service provider, or a charter school employee who knowingly expends or authorizes the expenditure of charter school funds or who knowingly authorizes or executes any employment, purchase, or contract, in violation of this section, shall be jointly and severally liable in person and upon any official fidelity bond given to the authorizer to the extent of any payments on the void claim; and

(c) A requirement that, if at any time during any fiscal year of the charter school's existence, a member of the charter school board of directors, an education service provider, or a charter school employee knows or reasonably should know that the charter school has or will become unable to pay in full its projected expenses as they fall due, the charter school shall immediately so advise the department and the authorizer, and shall provide the department and the authorizer with all financial information relating to revenues and expenses of the charter school necessary for the department and the authorizer to determine the extent and cause of any potential operating deficit. If the member of the charter school board of directors, the education service provider, or the charter school employee fails to provide the notice to the department and the authorizer required by this subsection or fails to cooperate with the department and the authorizer in the production of financial information pursuant to this subsection:

1. The authorizer shall determine if grounds exist to revoke the charter contract; and

2. The knowingly acting member of the charter school board of directors, the education service provider, or the charter school employee may be subject to the liability established in paragraph (4)(b) of this section.

(5) An authorizer shall include in the charter contract the specific, exclusive reasons and timelines for closure initiated by the charter school board of directors, and the closure protocol and policies and procedures applicable to closure of the charter school.

(6) An authorizer shall require in the charter contract the closure requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(7) An authorizer shall require in the charter contract that the charter school shall not prohibit a student from attending and shall not unenroll or withdraw a student unless the charter school has complied with KRS 158.150.

(8) An authorizer shall require in the charter contract that the charter school board of directors maintain separate accountings of all funds received and disbursed by each charter school under the charter school board of directors.

(9) An authorizer shall require in the charter contract that any contract the charter school board of directors enters with an education service provider has to be approved by the authorizer

prior to execution and that any contract the charter school board of directors enters with an education service provider shall comply with the following:

(a) Clearly establish the primacy of the charter contract over the contract between the charter board of directors and the education service provider;

(b) Clearly identify the charter school board of directors as the party ultimately responsible for the success or failure of the charter school, and clearly define the education service provider as a vendor of services;

(c) Prohibit the education service provider from selecting, approving, employing, compensating, or serving as members of the charter school board of directors;

(d) Require the charter school board of directors to directly select, retain, and compensate the charter school's legal counsel, finance staff, audit firm, and school leader;

(e) Provide for payments to the charter school to be made to an account controlled by the charter school board of directors, not the education service provider;

(f) Require all instructional materials, furnishings, and equipment purchased or developed with charter school funds be the property of the charter school, not the education service provider;

(g) Identify and describe the roles and responsibilities of the charter school board of directors and the education service provider, including all services to be provided under the contract between the charter school board of directors and the education service provider;

(h) Identify and describe the performance measures and consequences by which the charter school board of directors shall hold the education service provider accountable for performance, aligned with the performance measures in the charter contract;

(i) Identify and describe with specificity all compensation to be paid to the education service provider, including all fees, bonuses, and the conditions, consideration, and restrictions on such compensation;

(j) Identify and describe the terms of any facility agreement that may be part of the relationship between the charter school board of directors and the education service provider;

(k) Identify and describe financial reporting requirements and provisions for the charter school board of directors' financial oversight of the education service provider and the charter school;

(l) Identify and describe all other financial terms of the contract, including disclosure and documentation of all loans or investments by the education service provider to the charter school board of directors, and provision for the disposition of assets upon closure in accordance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(m) Include assurances that the charter school board of directors, at all times, shall maintain independent fiduciary oversight and authority over the charter school budget and ultimate responsibility for the charter school's performance;

(n) Include provisions for contract termination without penalties for the charter school and without costs beyond the pro-rated value of the services provided by the education service provider;

(o) Assure:

1. That the charter school board of directors shall be structurally independent from the education service provider and shall set and approve charter school policies;

2. That the terms of the contract between the charter school board of directors and the education service provider are reached through arm's-length negotiations in which the charter school board of directors is represented by legal counsel that does not also represent the education service provider; and

(p) Identify and describe the respective responsibilities of the charter school board of directors and the education service provider in the event of school closure.

(10) An authorizer shall prohibit a charter school board of directors, in the charter contract, from delegating the charter school board of directors' responsibilities in subsection (9) of this section to the education service provider.

(11) An authorizer shall not enter a charter contract for start-up, conversion, or renewal of a charter school, or agree to any

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charter contract amendment, unless the charter contract or amendment is approved by the commissioner of education as follows:

(a) An authorizer shall provide the commissioner of education a copy of a proposed charter contract or proposed amendment;

(b) Within fifteen (15) days of receipt of the proposed charter contract or amendment from the authorizer, pursuant to KRS 160.1594(9), the commissioner of education shall provide to an authorizer and the charter school board of directors approval of the contract or:

1. The reasons for a denial and any suggestions for remedy of these reasons; and

2. Notice of the opportunity for resubmission of the remedied contract or amendment to the commissioner of education; and

(c) Any failure to meet the commissioner of education's requirements for approval shall render the charter contract or its amendment void.

Section 6. Standards of Authorizer Performance Concerning Charter School Monitoring. (1) An authorizer, that determines a charter school board of directors has governance over more than one (1) charter school and has failed to meet the requirements of KRS 160.1592, shall commence an investigation to determine if the charter school board of directors is in compliance with the charter contracts for every other charter school under the authorizer's jurisdiction.

(2) An authorizer shall monitor the performance of the charter contract by a charter school board of directors, and any educational service provider. If the authorizer believes there is an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, the authorizer shall commence an investigation.

(3) An authorizer that verifies an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the commissioner of education in addressing and remedying the issue.

(4) An authorizer that verifies an issue with any aspect of the performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the charter school of the issue and take necessary action, including unilateral imposition of conditions on the charter school, revocation, or nonrenewal of the charter contract, to resolve the issue and to provide notice of the issue and the resolution to the charter school's adult students, emancipated youth students, parents, persons with custody or charge, and the department.

(5) An authorizer shall at least monthly review the financial budget reports of the charter school and take the following action:

(a) If the budget projections indicate that the charter school's annual operating expenses may at any time during the school year cause the annual operating revenues to fall below two (2) percent of the total projected annual operating revenues included in the school's approved budget, the charter school shall provide specific notice of this to the authorizer and the authorizer shall:

1. Require the charter school to implement a cash management plan approved by the authorizer;

2. Commence a more in-depth review, and an audit if necessary, of the charter school's financial budget reports, expenditures, and revenues;

3. Request financial management assistance for the charter school from the department; and

4. Restrict the charter school's expenditures and require the authorizer's approval prior to expenditure of charter school funds for the remainder of the school year; and

(b) If the charter school defaults on a financial obligation or if the authorizer otherwise suspects the charter school may close prior to the end of the school year or the charter contract term, the authorizer shall:

1. Consult with the commissioner of education;

2. Communicate with the charter school board of directors to determine the need for charter contract revocation;

3. Commence actions under (a) above;

4. Review the closure protocol;

5. Review the charter contract termination provisions;

6. Communicate with the charter school board of directors regarding the closure protocol and contract provisions for termination; and

7. Notify students and resident local school districts, as soon as necessary to ensure all students and resident local school districts are provided adequate time to prepare for the student transitions and to provide free and appropriate public education to any returning students.

(6) An authorizer shall revoke the charter contract and determine the timeline for closure if the authorizer determines the charter school:

(a) Is financially insolvent;

(b) Is financially unsustainable for the remainder of the school year or the charter contract term; or

(c) Has violated or threatened the health and safety of the students of the public charter school, pursuant to KRS 160.1598(7).

(7) The department shall develop a charter contract performance framework that an authorizer may utilize in developing a charter contract performance framework. In addition to the requirements of KRS 160.1596, the authorizer's charter contract performance framework shall include academic, financial, and organizational performance frameworks, and targets in the following areas:

(a) Student assessment and accountability;

(b) Student graduation rates;

(c) Student promotion rates;

(d) Student attendance rates;

(e) Student admission and enrollment in postsecondary institutions; and

(f) Other outcomes.

Section 7. Standards of Authorizer Performance Concerning Charter Approval, Revocation, Renewal, and Nonrenewal. (1) An authorizer shall not approve a charter application, contract with, or renew a contract with a charter school board of directors for a charter school that:

(a) Does not operate:

1. A breakfast program under the Child Nutrition Act of 1966, 42 U.S.C. 1773, as amended (CNA), and a lunch program under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq. (NSLA); or

2. A breakfast and lunch program with provision of meals at no cost to students who qualify for free meals under the CNA and NSLA and with the provision of meals at a reduced cost to students who qualify for reduced price meals under the CNA and NSLA; or

(b) Does not provide initial and continuing evidence and assurances of the charter school's financial solvency and financial sustainability, as demonstrated initially by the financial plan in the charter application, to cover the expenses of start-up or conversion, operation, and any foreseen or unforeseen closure of the charter school during the fiscal year or during the contract term.

(2) An authorizer shall require for approval of a charter application, for contracting with a charter board of directors, for performance of a charter contract, and for renewal of a charter contract, the following:

(a) Inclusion of at least two (2) local school district resident parents or persons with custody or charge of local school district resident students who will attend the charter school in a charter school board of directors;

(b) Exercise by a charter school board of directors of their authority in KRS 160.1592(3)(p)4 and 5 only as allowed for a local board of education in KRS 160.540;

(c) Participation of all members of a charter school board of directors in annual training, approved by the commissioner of education, on topics of charter school governance and operation including financial governance and transparency; conflict of interest; curriculum and instruction; educational services provided for special needs, at risk, English learner, gifted, and other special

population students; physical restraint and seclusion of students; and ethics. Fulfillment of this requirement shall occur through:

1. Twelve (12) hours of annual training for a new charter school board member or a member with zero to eight (8) years of experience as a charter school board member and eight (8) hours for a charter school board member with more than eight (8) years of experience as a charter school board member; or

2. Competency-based annual training;

(d) Attendance by the authorizer, or its designee for authorizing, or at least one (1) member of the authorizer's board of directors at any due process hearing conducted pursuant to KRS 158.150 to suspend or expel a charter school student. A charter school board of directors, with the consent of the parent, person with custody or charge, adult student, or emancipated youth student, and as otherwise allowed by confidentiality laws, may invite the resident local district superintendent to attend the due process hearing and to provide information to the charter school board of directors as to the educational services the resident local school district would provide the student:

1. If the student is expelled from the charter school; and

2. If the charter school board of directors determines, on the record and supported by clear and convincing evidence that the charter school cannot provide or assure that educational services are provided to the student in an appropriate alternative program or setting because the expelled student posed a threat to the safety of other students or school staff and could not be placed into a state-funded agency program;

(e) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of the Individual with Disabilities Education Act dispute resolution procedures, 707 KAR 1:340, regarding a student attending a charter school or the services provided by a charter school;

(f) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of physical restraint or seclusion of charter school students;

(g) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of allegations received or substantiation of violation of any health, safety, civil rights, and disability rights of students, staff, or parents or persons with custody or charge;

(h) Pursuant to KRS 160.1592(14), adherence by the charter school board of directors, and any education service provider, to the requirements of KRS 160.330 and 702 KAR 3:220 for the waiver of fees for students eligible for free or reduced price lunch;

(i) Provision, to the authorizer and to the public by the charter school board of directors and any education service provider, updates on the charter school's performance of the charter contract, according to the charter contract and performance framework;

(j) Restriction on expenditure of charter school resources and funds for school purposes only;

(k) Prohibition on the expenditure of charter school resources and funds in excess of the fair market value of the product, service, or consideration received;

(l) Prohibition on the disposal of charter school resources for less than the fair market value of the resource disposed;

(m) Restriction on the addition or moving of any location of the charter school without the written consent of the authorizer and amendment of the charter contract; and

(n) Provision, to the authorizer by the charter school board of directors and any education service provider, of student enrollment and attendance records and data at least monthly during the school year.

(3) An authorizer shall revoke, effective at the end of the school year, a charter contract for any of the reasons in KRS 160.1598(6).

(4) An authorizer shall require continuous enrollment at a charter school of at least eighty (80) percent of the charter contract minimum student enrollment requirements and shall monitor and take action as follows if that minimum is not met:

(a) The charter school shall provide reports to the authorizer on student enrollment and attendance at least twice a month; and

(b) Failure of the charter school to maintain this continuous, minimum student enrollment shall result in an immediate review by the authorizer of:

1. The charter school's operations;

2. The charter school's financial solvency;

3. The charter school's financial sustainability through the end of the school year and the end of the charter contract term;

4. The potential for closure;

5. Violation of the charter contract; and

6. The need for imposition of unilateral conditions, amendment, nonrenewal, or revocation of the charter contract, or immediate revocation of the charter contract pursuant to KRS 160.1598(7).

(5) An authorizer shall not approve a charter application for a start-up public charter school or conversion charter school if the applicant or proposed member of the board of directors has been previously found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, and the authorizer shall ensure compliance with this requirement as follows:

(a) The authorizer shall consult with the Kentucky Board of Education's designated agency to ensure compliance with this requirement;

(b) The Kentucky Board of Education's designated agency may provide copies of its relevant written reports described in 702 KAR 7:065 Section 3(17) to the authorizer; and

(c) If the authorizer does determine a member of the applicant or the proposed board of directors has previously been found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, the authorizer may only approve a charter application, contract with, or renew a charter for a start-up public charter school or conversion charter school that does not sponsor interscholastic athletic activities, unless the charter school's sponsorship of interscholastic athletic activities is approved by the Kentucky Board of Education.

(6) An authorizer shall remove a member of a board of directors that has been convicted of a crime described in KRS 61.040 and remove any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure when the member or members threaten the health, safety, civil rights, or disability rights of the students or the community pursuant to KRS 160.1598(11).

(7) An authorizer shall revoke or nonrenew a charter school contract if the commissioner of education has determined a member of the board of directors, or an education service provider at the direction of a member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Assessment Program or KRS 160.1592(3)(g), for a student assessment included in:

(a) The performance framework of the charter contract; or

(b) The state accountability system.

(8) For issues in a charter school's performance that do not require immediate action by the authorizer, as stated in KRS 160.1590 to 160.1599, and 701 KAR Chapter 8, or otherwise to protect the health, safety, civil rights, disability rights, and well-being of students and the community, an authorizer may utilize a progressive system of monitoring consequences including notices of deficiencies or conditions unilaterally imposed on the charter school prior to revocation or nonrenewal. An authorizer shall share publicly a notice of deficiency or a condition unilaterally imposed on the charter school as well as the underlying charter school performance issue and shall provide a copy to the commissioner of education and to the Kentucky Board of Education.

(9) An authorizer shall comply with the following prior to approving a charter application for a charter school or renewing a charter school contract:

(a) Holding in the resident local school district a public hearing to allow for public comment on the charter application; and

(b) Allowing public comment to be submitted in writing prior to the hearing, or oral or written public comment at the hearing and

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allowing comment at the public hearing by a resident superintendent who has filed an objection to the charter application.

Section 8. Standards of Authorizer Performance Concerning Charter Closure. (1) An authorizer's charter school closure protocol shall include the following:

(a) Provision, to the authorizer by the charter school, of contact information and resident local school district information for all parents, persons with custody or charge, adult students, and emancipated youth students;

(b) Notification to all parents, persons with custody or charge, adult students, and emancipated youth students of:

1. The closure decision;
2. The closure process;
3. Information on student instruction and reassignment;
4. Information on courses, levels, and credits completed by the student;

5. Information on the process for obtaining a copy of the student's education records; and

6. Contact information for additional information;

(c) Notification to the resident local school districts and the department of:

1. The closure decision;
2. The closure date;
3. The closure process;
4. Availability and timeline for appeals and their intersection with the closure protocol;

5. A copy of the notification provided to charter school parents, persons with custody or charge, adult students, and emancipated youth students;

6. Information on student instruction and reassignment; and

7. Contact information for additional information;

(d) Budget review and revision to limit expenditures to only those in the approved budget required for fulfilling the obligations through closure;

(e) Communication of the budget information to parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and the Kentucky Board of Education;

(f) Meeting of the authorizer with the charter school board of directors and charter school employees to notify and coordinate:

1. The closure;
2. The closure process;
3. The closure timeline and dates;
4. Information on student instruction and reassignment;
5. Employment, payroll, and benefits information;
6. Transfer of federal and state funds and assets according to the federal and state requirements; and
7. Contact information for additional information;

(g) Additional and final notification to parents and resident local school districts, including:

1. Information on the existence and role of any appeal of the closure;
2. Identifying the last student attendance day;
3. Detailing end of the year activities and transition activities for students; and
4. Providing information and assistance for reassignment of students;

(h) Procedures and requirements for establishment of transition teams, development of closure plan, and assignment of roles for closure;

(i) Procedures and requirement for scheduling closure meetings with the transition team, parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and employees;

(j) Procedures and requirements for a final report from the charter school board of directors to the authorizer and the department detailing completion of the closure plan;

(k) Maintenance of the charter school facilities;

(l) Identification and notification of all creditors and debtors of the board of directors and the Teachers' Retirement System and the County Employees Retirement System;

(m) Notification of federal, state, local, and private grantors;

(n) Termination of any contract with an education service provider;

(o) Accounting, inventory, and protection of assets;

(p) Notification of employee benefit providers;

(q) Notification of all contractors and termination of all contracts;

(r) Transfer of student and personnel records;

(s) Notification of the IRS;

(t) Issuance of final grades to students;

(u) Dissolution of the charter school;

(v) Maintenance of records; and

(w) Completion of an independent final audit within six (6) months of the closure of the charter school that may function as the annual audit, and that includes at least:

1. An accounting of all financial assets, including cash and accounts receivable and an inventory of property, equipment, and other items of material value;

2. An accounting of the liabilities, including accounts payable and any reduction in apportionments as a result of audit findings or other investigations, loans or grants, and unpaid staff compensation; and

3. An assessment of the disposition of any restricted funds received by or due to the charter school.

(2) An authorizer's charter school closure protocol shall include the following regarding distribution of assets upon closure:

(a) The assets of the charter school, if sufficient to satisfy all the outstanding debts of the charter school, shall be distributed in the following order:

1. To satisfy outstanding payroll obligations for employees of the public charter school;

2. To creditors of the charter school; and

3. To the resident local school districts, in direct proportion to the percentage of the charter school student body that will be returning to each resident local school district after closure;

(b) If the assets of the public charter school are insufficient to satisfy all debts of the charter school, the prioritization of the distribution of assets may be determined by a court of law; and

(c) A charter school board of directors shall distribute its assets within six (6) months of closure of the charter school, unless granted an extension by the authorizer or ordered otherwise by a court of law.

(3) The commissioner of education, upon request by the authorizer, may appoint an independent third party, paid from the charter school's funds, to manage the closure with assistance from the department. The commissioner of education may remove an appointed independent third party for cause and appoint a replacement.

(4) The department shall develop a charter closure protocol guide that an authorizer may utilize in developing the closure protocol.

Section 9. Investigation of an Authorizer. (1) The Kentucky Board of Education shall conduct a special review of an authorizer as follows:

(a) If there is persistently unsatisfactory performance of the portfolio of the public charter schools of the authorizer;

(b) If there is a pattern of well-founded complaints about the authorizer or its public charter schools; or

(c) If the Kentucky Board of Education finds other objective circumstances warranting investigation.

(2) The Kentucky Board of Education shall request investigation by the commissioner of education.

(3) In reviewing and evaluating the performance of an authorizer, the Kentucky Board of Education shall apply nationally recognized standards for quality in charter authorizing, in addition to the standards of performance included in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) If at any time the Kentucky Board of Education determines that an authorizer is not in compliance with an existing charter contract or the requirements for an authorizer, the Kentucky Board of Education shall either:

(a) Notify the authorizer in writing of any identified problem and the authorizer shall have a reasonable opportunity to respond and remedy the problem; or

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(b) If deemed necessary, take action against the authorizer under Section 10.

Section 10. Consequences. (1) The Kentucky Board of Education may, in addition to its authority over authorizers and their action on a charter application, renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter school pursuant to KRS 160.1595(1), place an authorizer on probation and require the following during probation of an authorizer:

- (a) Additional training for the authorizer;
- (b) Meeting with the commissioner of education to provide status reports and solicit feedback on charter school performance during a charter contract;
- (c) Written and in-person status reports to the Kentucky Board of Education on the authorizer's monitoring of charter schools and other authorizing activity;
- (d) Approval by the commissioner of education on the authorizer's monitoring activities, imposition of unilateral conditions, and revocation decisions;
- (e) Approval of the Kentucky Board of Education for any renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter contract; and
- (f) Any other consequences the Kentucky Board of Education deems necessary to ensure compliance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) The Kentucky Board of Education shall establish the length and extent of the probation of the authorizer's authority and reporting requirements for the authorizer to report on the progress of the charter schools authorized by the authorizer.

(3) The Kentucky Board of Education shall state in its order probating the authority of the authorizer:

- (a) The extent of the probation of the authorizer's authority;
- (b) The length of the probation of the authorizer's authority;
- (c) The grounds under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for the probation of the authorizer's authority; and
- (d) The anticipated changes that would have to occur for the Kentucky Board of Education to consider ending the probation of the authorizer's authority under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) The Kentucky Board of Education may entertain a request by the authorizer for termination of the probation if the authorizer submits, at least forty-five (45) days prior to the Kentucky Board of Education's regular meeting, the following:

- (a) The authorizer's request for ending the probation; and
- (b) The authorizer's evidence of:
 1. Its efforts to correct the grounds for the probation of its authorizing authority;
 2. The changes required in the Kentucky Board of Education's order; and
 3. Its plan to ensure future compliance with the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

Section 11. ~~[Statewide Evaluation of Public Charter School Authorizers. (1) Beginning with the conclusion of the 2018-2019 fiscal year, the department shall provide an annual report on the state's public charter school authorizers and their charter schools to the Governor, the Interim Joint Committee on Education, the secretary of the Education and Workforce Development Cabinet, and the public that includes information from the annual reports submitted by every authorizer as well as any additional relevant data compiled by the department.~~

- ~~(2) The annual report shall include:

 - (a) For all public charter schools in the state, by individual charter school, and by authorizer, and disaggregated by level, school level, or educational level; race; free and reduced price lunch eligibility status; and status as a student with special needs:
 1. The academic performance;
 2. The number of students enrolled, withdrawn, suspended, and expelled;
 3. Financial audit results;
 4. Financial solvency and sustainability for the fiscal year and the contract term;~~

- ~~5. Closure information; and~~
- ~~6. For charter schools with education service providers, information on the contracts and relationships between charter schools and education service providers and any financial risk, lack of accountability, and program performance risk resulting from the contracts and relationships between charter schools and education service providers;~~
- ~~(b) A comparison of the performance and growth of public charter school students with the performance and growth of comparable groups of students in noncharter public schools;~~
- ~~(c) A detailed update on the authorizing process;~~
- ~~(d) Recommendations for adjustments to public charter school governance and oversight; and~~
- ~~(e) The department's assessment of the successes, challenges, and areas for improvement in meeting the purposes of KRS 160.1591, including the department's recommendations as to any suggested changes in state law or policy necessary to strengthen the state's public charter schools.~~

~~Section 12.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

- ~~(a) "Kentucky Charter School Application and Addendum", February 2018[is incorporated by reference.]; and~~
- ~~(b) "Notice of Intent", February 2018.~~
- ~~(2) ["Notice of Intent", February 2018, is incorporated by reference.] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Legal[Legislative and Communication] Services, [5th floor, 300 Building,] 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

KEVIN C. BROWN, Interim Commissioner
 LU YOUNG, Chair
 APPROVED BY AGENCY: June 10, 2020
 FILED WITH LRC: June 10, 2020 at noon
 PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 25, 2020, at 10am in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020.
 CONTACT PERSON: Todd G. Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen
 (1) Provide a brief summary of:
 (a) What this administrative regulation does: This administrative regulation fulfills KRS 160.1596(3), which requires the Kentucky Board of Education (KBE) to promulgate administrative regulations "to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance." Proposed amendments to 701 KAR 8:020 are primarily located in Section 3(4) and amend the training requirements for charter school authorizers, which currently are

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the 172 local boards of education in Kentucky, to alleviate hardships on school districts and local board of education members.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to fulfill KRS 160.1596(3), which requires the Kentucky Board of Education (KBE) to promulgate administrative regulations “to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance.”

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 160.1596(3), which not only authorizes but actually mandates the KBE promulgate administrative regulations “to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance.”

(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 KRS 160.1596(3), which requires the KBE to promulgate administrative regulations “to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance.” Proposed amendments to 701 KAR 8:020 are primarily located in Section 3(4) and amend the training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky. These amendments, once implemented, will assist in the effective administration of KRS 160.1596(3) by alleviating hardships on school districts and local board of education members.

(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: Proposed amendments to 701 KAR 8:020 are primarily located in Section 3(4) and amend the training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky, to alleviate hardships on school districts and local board of education members.

(b) The necessity of the amendment to this administrative regulation: Proposed amendments to 701 KAR 8:020 are primarily located in Section 3(4) and amend the training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky. These amendments are necessary to alleviate hardships on school districts and local board of education members.

(c) How the amendment conforms to the content of the authorizing statutes: Amendments to this administrative regulation conform to KRS 160.1596(3), which requires the KBE to promulgate administrative regulations “to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance.” Specifically, proposed amendments to 701 KAR 8:020 are primarily located in Section 3(4) and amend the training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky, to alleviate hardships on school districts and local board of education members.

(d) How the amendment will assist in the effective administration of the statutes: Proposed amendments to 701 KAR 8:020 are primarily located in Section 3(4) and amend the training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky. These amendments, once implemented, will assist in the effective administration of KRS 160.1596(3) by alleviating hardships on school districts and local board of education members.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts and boards of

education, public charter schools and charter school applicants, the KBE, and the Kentucky Department of Education (KDE) will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Of the entities listed in (3), local school districts and boards of education will be most impacted by this amendment. Specifically, proposed amendments to 701 KAR 8:020 are primarily located in Section 3(4) and amend the training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky, to alleviate hardships on school districts and local board of education members.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional anticipated costs for complying with the amendment to this administrative regulation. Of the entities listed in (3), local school districts and boards of education will be most impacted by this amendment, and it is anticipated that proposed amendments to 701 KAR 8:020, which are primarily located in Section 3(4), will reduce or eliminate costs related to training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Proposed amendments to 701 KAR 8:020 are primarily located in Section 3(4) and amend the training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky, to alleviate hardships on school districts and local board of education members.

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

(a) Initially: There are no additional anticipated costs for the implementation and enforcement of the amendment of this administrative regulation. It is anticipated that proposed amendments to 701 KAR 8:020, which are primarily located in Section 3(4), will reduce or eliminate costs related to training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky.

(b) On a continuing basis: There are no additional anticipated costs for the implementation and enforcement of the amendment of this administrative regulation. It is anticipated that proposed amendments to 701 KAR 8:020, which are primarily located in Section 3(4), will reduce or eliminate costs related to training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional anticipated costs for the implementation and enforcement of the amendment of this administrative regulation; however, in the event funding is needed to implement and enforce this administrative regulation, KDE general funds, school district funds, and/or funds provided to public charter schools may be utilized.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: An increase in fees or funding is not anticipated to be necessary to implement the amendment to this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the amendment to this administrative regulation applies equally to all local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local school districts and boards of education, public charter schools and charter school applicants, the Kentucky Board of Education (KBE), and the Kentucky Department of Education (KDE) will be impacted by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1596(3) requires the KBE to promulgate administrative regulations "to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance."

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no additional anticipated expenditures or revenues for any state or local government agency related to the amendment of this administrative regulation. It is anticipated that proposed amendments to 701 KAR 8:020, which are primarily located in Section 3(4), will reduce or eliminate costs related to training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? There are no additional anticipated costs to administer the amendment of this administrative regulation for the first year. It is anticipated that proposed amendments to 701 KAR 8:020, which are primarily located in Section 3(4), will reduce or eliminate costs related to training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky.

(d) How much will it cost to administer this program for subsequent years? There are no additional anticipated costs to administer the amendment of this administrative regulation in subsequent years. It is anticipated that proposed amendments to 701 KAR 8:020, which are primarily located in Section 3(4), will reduce or eliminate costs related to training requirements for charter school authorizers, which currently are the 172 local boards of education in Kentucky.

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

Revenues (+/-): N/A
Expenditures (+/-): NA
Other Explanation: N/A

**PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(Amendment)**

820 KAR 1:050. Raffles.

RELATES TO: KRS 238.545, 238.550

STATUTORY AUTHORITY: KRS 238.515

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and to promulgate administrative regulations necessary to implement KRS Chapter 238. This administrative regulation establishes standards for the conduct of raffles.

Section 1. Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section or duplicate ticket and shall be

consecutively numbered. If raffle tickets are sold electronically, the charitable organization selling the tickets shall provide all purchasers with a physical ticket or electronic communication that contains the information required by subsection (2).

(2) The detachable section or duplicate of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser's name, complete address, and telephone number.

(3) The following information shall be on each ticket:

(a) The date and time for each drawing;

(b) The location of each drawing;

(c) The name of the charitable organization conducting the raffle;

(d) The charitable organization's license number or exemption number;

(e) The price of the ticket; and

(f) Each prize to be awarded with a fair market value over \$500.

(4) The requirements of subsections (2) and (3) of this section shall be waived if:

(a) The raffle tickets sell for five (5) dollars or less, or

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event or a licensed special limited charity fundraising event.

Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

(3) If the prize to be awarded is the jackpot of a progressive raffle board, the charitable organization's charitable gaming session records shall report in the gross receipts total all startup cash, monies derived from raffle ticket sales, and any other contribution to the jackpot.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.

(2) A person shall not be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) For raffles using paper tickets, each [Each] ticket seller shall return to the charitable organization the stubs or other detachable sections or duplicates of all tickets sold prior to the drawing.

(4) For raffles using paper tickets, before [Before] drawing, the charitable organization shall place the seller's portion of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

(5) If a charitable organization uses electronic raffle software to conduct a raffle, the charitable organization shall ensure that the electronic raffle software has been:

(a) Purchased, leased, or otherwise obtained from a distributor licensed by the department;

(b) Manufactured by a manufacturer licensed by the department;

(c) Certified by an independent testing lab; and

(d) Approved by the department for use in the Commonwealth.

(6) A charitable organization shall conduct a raffle entirely with paper tickets or entirely with electronic tickets; a charitable organization shall not use both paper and electronic tickets in the same raffle.

Section 4. Claiming Raffle Prizes. (1) If the winner is not present at the drawing, the charitable organization shall notify the winner within seven (7) days of the drawing that the winner shall claim the prize within thirty (30) days.

(2) If a winner does not wish to claim the prize but wishes to donate it to the charitable organization, the charitable organization shall obtain a written statement of the winner's intention within the

thirty (30) day period. A charitable organization shall not accept the donation to the charitable organization of a prize won if doing so would violate KRS 238.540.

(3) If a raffle winner does not claim the prize or donate it to the charitable organization within thirty (30) days after having been contacted by certified mail, or if the raffle winner is ineligible by law to claim the prize, the charitable organization shall notify the department and draw another ticket in the presence of department personnel.

(4) The requirements of subsections (1), (2), and (3) of this section shall be waived, and the charitable organization shall be allowed to draw tickets until a winner is present if:

- (a) The raffle tickets sell for five (5) dollars or less;
- (b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event; or
- (c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charity fundraising event.

Section 5. Electronic Raffle Definitions. (1) "Bearer ticket" means an electronic or paper ticket that contains one or more draw numbers purchased.

(2) "Counterfoil" means an electronic record or paper ticket stub, also known as a barrel ticket, which will be drawn to determine a winner and contains a single draw number matching the player's purchased bearer ticket and may, depending on the type of raffle, contain the name, address, or telephone number of the player.

(3) "Draw number" means a uniquely identifiable number that is provided to the purchaser for each chance purchased and may be selected as the winning number for the raffle.

(4) "Electronic raffle system" means computer software and related equipment used by raffle licensees to sell tickets, account for sales, and facilitate the drawing of tickets to determine the winners.

(5) "Raffle sales unit" (or "RSU") means a portable and/or wireless device, a remote hardwired connected device or a standalone cashier station that is used as a point of sale for bearer tickets.

(6) "Validation number" means a unique number which may represent one or more draw numbers that will be used to validate the winning number for the raffle.

Section 6. Electronic Raffle System Standards. (1) Each electronic raffle system shall have a device or facility that provides for the sale of bearer tickets and the collection and accounting tools needed to track all sales initiated through the raffle system. The system shall have the ability to support all RSUs, whether they are hard-wired or connected wirelessly, to ensure that each RSU sends or transmits all ticket sales to the system. The system shall have the ability to facilitate winner selection by either manual or electronic means.

(2) Time Limits: The electronic raffle system software must be capable of setting time limits for when tickets may be purchased for a raffle drawing.

(3) Configuration Changes: After the commencement of a raffle, the electronic raffle system software shall not allow changes to parameters which may affect the integrity of the raffle.

(4) Bearer Tickets: After the payment of a fee, participants shall receive a bearer ticket for one or more chances to win a raffle drawing. The bearer ticket shall be printed with the information required by Section 1(2) of this administrative regulation and:

- (a) The date and time (in twenty-four (24) hour format showing hours and minutes) that the ticket was purchased;
- (b) All unique draw numbers purchased for the raffle;
- (c) The RSU identifier from which the ticket was generated; and
- (d) A unique validation number or barcode.

(5) Validation Numbers: The algorithm or method used by the electronic raffle system to generate the bearer ticket validation number must be unpredictable and ensure against duplicate validation numbers for the raffle currently in progress.

(6) Voiding a Ticket: The electronic raffle system shall be

designed to flag or otherwise identify a voided bearer ticket and its corresponding draw number. The system shall record at a minimum the draw numbers and the validation number from the voided bearer ticket. Voided draw numbers shall not be able to be resold or reissued for that raffle.

(7) Counterfoils: Where a manual draw is used to determine a winner, all counterfoils used in a raffle drawing must be the same size, shape, and weight. A counterfoil shall be printed or stored electronically for each purchased draw number. If an electronic random number generator is used to determine the winner of the raffle drawing, a printed counterfoil is not required. A counterfoil must only contain one draw number and shall contain the following information, which matches the bearer ticket issued to the player:

- (a) Event Identifier or Location;
- (b) The draw number;
- (c) Issued date and time (in twenty-four (24) hour format showing hours and minutes);
- (d) Value or cost of the bearer ticket; and
- (e) Unique validation number or barcode.

(8) Reprinting of Counterfoils: Where the system supports the reprinting of counterfoil tickets, this facility shall require additional supervised access controls, and the draw numbers for all reprinted counterfoils shall be flagged in the system as reprints.

(9) Raffle Prize Displays: An electronic raffle system may include a raffle prize display that can be viewed by participants of the raffle that displays the raffle prize and the current progression of the prize. The electronic raffle system may have multiple raffle awards displayed in an alternating fashion.

(10) Electronic Raffle Drawing Requirements: A raffle drawing shall be held at a date, time, place stated on the charitable organization's license or certificate of exemption. The drawing shall be administered by an officer or chairperson of the charitable organization. A raffle drawing shall only be conducted after:

- (a) The close of the raffle; and
- (b) All sales and voided sales for the particular raffle purchase period have been reconciled.

(11) Closing the Raffle Purchase Period: The system must be capable of closing off the sale of bearer tickets at a time determined by the operator. No sales of tickets may occur after the raffle purchase period has been closed. The system must be capable of displaying to the operator by way of the RSU device display that all sales from a particular device have been uploaded, transferred or otherwise communicated to the electronic raffle system.

- (a) On verification of the sales data transfer, the RSU device must be capable of being reset or closed; and
- (b) The RSU must not be enabled for any further sales for the current raffle.

(12) Voided Tickets: Voided tickets shall not be qualified toward any prize. The system shall be capable of reconciling voided sales for the raffle purchase to identify all voided tickets that may be committed to the draw. The system shall record an acknowledgement from the event manager that voided tickets have been reconciled before permitting a winning number to be entered into the system for validation.

(13) Winner Determination: The operator shall conduct an electronic or other approved draw procedure which ensures a randomly selected draw number as a winner from all tickets sold. Each drawn counterfoil shall be verified as a sold and valid ticket. This process shall be repeated for each advertised prize.

(14) Official Drawing Results: Results of the drawing become official and final after the drawn number is verified as a winning bearer ticket for the respective drawing, and is presented to the participants of the raffle. The system shall display the winning draw on all capable display devices that are intended to be viewed by participants.

(15) Winner Verification: Winning tickets shall be verified prior to payout. Participants must present the bearer ticket to an authorized agent for validation with the system. The system shall be capable of verifying the winning draw numbers and shall allow for the validation of draw numbers either manually or through the use of a bar code scanner or equivalent.

(16) System Reporting Requirements: The system shall be

capable of producing general accounting reports to include the following information for each draw conducted:

(a) Raffle Drawing Report: A report which includes the following for each raffle drawing:

1. Date and time of the event;
2. Organization running the event;
3. Sales information;
4. Prize value awarded to participant;
5. Prize distribution (total raffle sales vs. prize value awarded to participant)

6. Refund totals by event;
7. Draw numbers-in-play count;
8. Winning number(s) drawn (including draw order, call time, and claim status); and

9. All other information required by 820 KAR 1:057.

(b) Exception Report: A report which includes system exception information, including, but not limited to, changes to system parameters, corrections, overrides, and voids;

(c) Bearer Tickets Report: A report which includes a list of all bearer tickets sold including all associated draw numbers, selling price, and RSU identifier;

(d) Sales by RSU: A report which includes a breakdown of each RSU's total sales (including draw numbers sold) and any voided and misprinted tickets;

(e) Voided Draw Number Report: A report which includes a list of all draw numbers that have been voided including corresponding validation numbers;

(f) Raffle Sales Unit Event Log: A report which lists all events recorded for each RSU, including the date and time and a brief text description of the event or identifying code.

(g) Raffle Sales Unit Corruption Log: A report which lists all RSUs unable to be reconciled to the system, including the RSU identifier, RSU operator, and the money collected;

(h) All information required by 820 KAR 1:057.

Section 7. Raffle Sales Unit Standards. (1) After the payment of a fee, participants shall receive a chance to win a raffle drawing. A chance to win a raffle drawing shall be purchased from an attendant-operated Raffle Sales Unit ("RSU").

(a) Attendant-Operated Raffle Sales Unit: A participant may purchase a bearer ticket from an attendant-operated RSU by providing payment for the ticket(s) to the attendant. Upon receiving payment, the attendant will provide the participant the bearer ticket(s) purchased by the participant.

(b) Player-Operated Raffle Sales Unit: A participant may purchase a bearer ticket from a player-operated RSU by following the instructions appearing on the screen of the RSU and providing payment for the ticket(s). Upon payment for the ticket(s), the RSU will issue the corresponding bearer ticket(s) purchased by the participant.

(2) An RSU must be capable of generating and printing a bearer ticket with one or more uniquely identifiable draw numbers.

(a) The system must not generate duplicate draw numbers within the same event.

(b) For each draw number generated, there must be one and only one corresponding counterfoil with the same draw number.

(c) The RSU must be capable of providing a transaction receipt in the form of a bearer ticket to a purchaser.

(3) Access Controls: Access to raffle sales software shall be controlled by a secure logon procedure. It shall not be possible to modify the configuration settings of an RSU without an authorized secure logon.

(4) Touch Screens: Touch screens shall be accurate once calibrated and shall maintain that accuracy for at least the manufacturer's recommended maintenance period.

(5) RSU Interface: The functions of all buttons, touch or click points represented on the RSU interface shall be clearly indicated within the area of the button, or touch/click point and/or within the help menu. There shall be no functionality available through any buttons or touch/click points on the RSU that are undocumented.

(6) Communications: A Raffle Sales Unit must be designed or programmed such that it may only communicate with authorized electronic raffle systems components. The electronic raffle system must have the capability to uniquely identify and authorize each

RSU used to sell tickets for a raffle.

(7) Wireless Raffle Sales Units: Communication must only occur between the RSU and the electronic raffle system via authorized access points.

(8) Printing Bearer Tickets: If the RSU connects to a printer that is used to produce bearer tickets, the bearer ticket shall include information as indicated in Section 1(2). It may be permissible for some of this information to be contained on the ticket stock itself.

(a) The RSU must control the transfer of ticket data sent to the printer, and only transfer ticket data to the printer when sufficient space is available in the printer memory to receive the ticket information.

(b) If a barcode forms part of the validation number printed on the bearer ticket, the printer must support the barcode format and print with sufficient resolution to permit validation by a barcode reader.

(9) Printer Error Conditions: The bearer ticket printer shall be able to detect and indicate to the operator the following error conditions:

(a) Low battery;

(b) Out of paper or paper low;

(c) Printer disconnected -It is permissible for the system to detect this error condition when it tries to print.

(d) If the unit is capable of reprinting a ticket, the reprinted ticket shall clearly indicate that it is a reprint of the original ticket.

(10) Critical Memory Requirements: Critical memory means memory that is used to store all data that is considered vital to the continued operation of the RSU. Critical memory shall be maintained for the purpose of storing and preserving critical data. This includes, but is not limited to:

(a) When not communicating with the system, recall of all tickets sold including, at minimum, draw numbers and validation numbers; and

(b) RSU configuration data.

(11) Maintenance of Critical Memory: Critical memory storage shall be maintained by a methodology that enables errors to be identified. This methodology may involve signatures, checksums, partial checksums, multiple copies, time stamps and/or effective use of validity codes.

(12) Comprehensive Checks: Comprehensive checks of critical memory shall be made on startup and shall detect failures with an extremely high level of accuracy.

(13) Unrecoverable Critical Memory: An unrecoverable corruption of critical memory shall result in an error. Upon detection, the raffle sales unit shall cease to function.

(14) Backup Requirements. The RSU must have a backup or archive capability, which allows the recovery of critical data should a failure occur.

(15) RSU Program Identification: All programs shall contain sufficient information to identify the software and revision level of the information stored on the RSU, which may be displayed via a display screen.

(16) Detection of Program Corruption: RSU programs shall be capable of detecting program corruption and cause the RSU to cease operations until corrected.

(17) Verification of Program Updates: Prior to execution of the updated software, the software must be successfully authenticated on the RSU.

(18) Independent Control Program Verification: The RSU shall have the ability to allow for an independent integrity check of the RSU's software from an outside source and is required for all software that may affect the integrity of the raffle. This must be accomplished by being authenticated by a third-party device or by allowing for removal of the media such that it can be verified externally. This integrity check will provide a means for field verification of the software to identify and validate the program. The test laboratory, prior to device approval, shall evaluate the integrity check method.

Section 8. Random Number Generator Requirements. (1) A random number generator shall reside on a program storage device secured in the logic board of the system. The numbers selected by the random number generator for each drawing shall

be stored in the system's memory and be capable of being output to produce a winning number. The use of an RNG results in the selection of raffle outcomes in which the selection shall:

- (a) Be statistically independent;
- (b) Conform to the desired random distribution;
- (c) Pass industry-standard recognized statistical tests, as chosen by the independent testing laboratory; and
- (d) Be unpredictable.

(2) Applied Tests. The test laboratory may employ the use of various recognized tests to determine whether or not the random values produced by the random number generator pass the desired confidence level of 99%. The independent test lab shall choose the appropriate tests on a case by case basis depending on the RNG under review. These tests may include, but are not limited to:

- (a) Chi-square test;
- (b) Equi-distribution (frequency) test;
- (c) Gap test;
- (d) Overlaps test;
- (e) Poker test;
- (f) Coupon collector's test;
- (g) Permutation test;
- (h) Kolmogorov-Smimov test;
- (i) Adjacency criterion tests;
- (j) Order statistic test;
- (k) Runs tests (patterns of occurrences should not be recurrent);

(1) Interplay correlation test;
(m) Serial correlation test potency and degree of serial correlation (outcomes should be independent of the previous game);

- (n) Tests on subsequences; and
 - (o) Poisson distribution.
- (3) Period: The period of the RNG, in conjunction with the methods of implementing the RNG outcomes, must be sufficiently large to ensure that all valid, sold numbers are available for random selection.

(4) Range: The range of raw values produced by the RNG must be sufficiently large to provide adequate precision and flexibility when scaling and mapping.

(5) Background RNG Cycling or Activity Requirement: In order to ensure that RNG outcomes cannot be predicted, adequate background cycling or activity must be implemented between each drawing at a speed that cannot be timed. The rate of background cycling or activity must be sufficiently random in and of itself to prevent prediction.

(6) RNG Seeding or Re-Seeding: The methods of seeding or re-seeding implemented in the RNG must ensure that all seed values are determined securely and that the resultant sequence of outcomes is not predictable.

(a) The first seed shall be randomly determined by an uncontrolled event. After every bearer ticket draw, there shall be a random change in the RNG process (new seed, random timer, delay, etc.). This will verify the RNG does not start at the same value, every time. It is permissible not to use a random seed; however, the manufacturer must ensure that the selection process will not synchronize.

(b) Unless proven to have no adverse effect on the randomness of the RNG outcomes or actually improve the randomness of the RNG outcomes, seeding and re-seeding must be kept to an absolute minimum. If for any reason the background cycling or activity of the RNG is interrupted, the next seed value for the RNG must be a function of the value produced by the RNG immediately prior to the interruption.

(7) Scaling Algorithms. The methods of scaling (i.e. converting raw RNG outcomes of a greater range into scaled RNG outcomes of a lesser range) shall be linear, and shall not introduce any bias, pattern or predictability. The scaled RNG outcomes must be proven to pass various recognized statistical tests as chosen by the independent testing laboratory.

(a) If a random number with a range shorter than that provided by the RNG is required for some purpose within the raffle system, the method of re-scaling, (i.e., converting the number to the lower range), is to be designed in such a way that

all numbers within the lower range are equally probable.

(b) If a particular random number selected is outside the range of equal distribution of rescaling values, it is permissible to discard that random number and select the next in sequence for the purpose of re-scaling.

(8) Winning Number Draw: The winning number selection shall only be produced from sold bearer ticket numbers from the current drawing to be available for selection.

(a) Each valid, sold raffle number shall be available for random selection at the initiation of each drawing; and

(b) For raffles which offer multiple awards or drawings with separate buy-ins for each, the winning number selection shall only be produced from sold bearer ticket numbers corresponding with each applicable award or drawing. As winning numbers are drawn, they shall be immediately used as governed by the rules of the raffle (i.e. the bearer tickets are not to be discarded due to adaptive behavior).

(9) No Corruption from Associated Equipment: An electronic raffle system shall use appropriate protocols to protect the random number generator and random selection process from influence by associated equipment, which may be communicating with the electronic raffle system.

Section 9. Electronic Raffle System Server Requirements (1) The Electronic Raffle System Server(s) may be located locally, within a single facility or may be remotely located outside of the facility through a Wide Area Network (WAN).

(2) Physical Security: The servers shall be housed in a secure location that has sufficient physical protection against alteration, tampering or unauthorized access.

(3) Logical Access Control: The electronic raffle system shall be logically secured through the use of passwords, biometrics, or other means certified as secure by the independent testing lab. The storage of passwords, PINs, biometrics, and other authentication credentials shall be secure. The system must have multiple security access levels to control and restrict different classes of access to the electronic raffle system.

(4) Security from Alteration, Tampering, or Unauthorized Access: The electronic raffle system shall provide a logical means for securing the raffle data against alteration, tampering, or unauthorized access. The following rules also apply to the raffle data within the Electronic Raffle System:

(a) No equipment shall have a mechanism whereby an error will cause the raffle data to automatically clear. Data shall be maintained at all times regardless of whether the server is being supplied with power.

(b) Data shall be stored in such a way as to prevent the loss of the data when replacing parts or modules during normal maintenance.

(5) Data Alteration: The electronic raffle system shall not permit the alteration of any accounting, reporting, or significant event data without supervised access controls. In the event any data is changed, the following information shall be documented or logged:

- (a) Data element altered;
- (b) Data element value prior to alteration;
- (c) Data element value after alteration;
- (d) Time and date of alteration; and
- (e) User login to identify the personnel that performed the alteration.

(6) Server Programming: There shall be no means available for an operator to conduct programming on the server in any configuration (e.g. the operator should not be able to perform SQL statements to modify the database). However, network administrators may perform authorized network infrastructure maintenance with sufficient access rights, which include the use of SQL statements that were already resident on the system.

(7) Copy Protection: Copy protection to prevent unauthorized duplication or modification of software, for servers or RSUs, may be implemented provided that:

(a) The method of copy protection is fully documented and provided to the Test Laboratory, who will verify that the protection works as described; or

(b) The program or component involved in enforcing the copy

protection can be individually verified by the methodology described in subsection (17).

(8) Uninterruptible Power Supply Support: Where the server is a stand-alone application, it must have an uninterruptible power supply ("UPS") connected and of sufficient capacity to permit a graceful shut-down and that retains all electronic raffle system data during a power loss. The electronic raffle system server may be a component of a network that is supported by a network-wide UPS provided that the server is included as a device protected by the UPS.

(9) System Clock Requirements: An Electronic Raffle System must maintain an internal clock that reflects the current date and time (in twenty-four (24) hour format showing hours and minutes) that shall be used to provide for the following:

- (a) Time stamping of significant events;
- (b) Reference clock for reporting; and
- (c) Time stamping of all sales and draw events.

(10) System Clock Synchronization Feature: If multiple clocks are supported the system shall have a facility to synchronize clocks within all system components.

(11) RSU Management Functionality: An electronic raffle system must have a master list of each authorized RSU in operation, including at minimum the following information for each entry:

- (a) A unique RSU identification number or corresponding hardware identifier (i.e. MAC);
- (b) Operator identification; and
- (c) Tickets issued for sale, if applicable.

(12) RSU Validation: It is recommended that RSUs be validated at least once per year with at least one method of authentication. The system shall have the ability to remotely disable the RSU after the threshold of unsuccessful validation attempts has been reached.

(13) Counterfoil Printers: Where printed counterfoils are in use, the printer mechanism shall be able to detect and indicate the following error conditions:

- (a) Out of paper;
- (b) Paper low;;
- (c) Memory Error;
- (d) Printer failure; and
- (e) Printer disconnected.

(14) Printer Disable. At any time during an active draw, the operator shall have the ability to manually disable a printer and remove the printer from the configuration without affecting the remaining printers or any outstanding print requests.

(15) Significant Event Logging. Significant events shall be communicated and logged on the electronic raffle system, which shall include:

- (a) Connection/Disconnection of an RSU or any component of the system;
- (b) Critical memory corruption of any component of the system.
- (c) Counterfoil Printer errors:
 - 1. Out of paper/paper low;
 - 2. Printer disconnect/failure; and
 - 3. Printer memory error.
- (d) Establishment and failure of communications between sensitive electronic raffle system components.
- (e) Significant event buffer full;
- (f) Program error or authentication mismatch;
- (g) Firewall audit log full, where supported; and
- (h) Remote access, where supported.

(16) Significant Event Surveillance or Security Functionality. Each significant event conveyed to the electronic raffle system shall be stored. An electronic raffle system shall provide an interrogation program that enables on-line comprehensive searching of the significant events through recorded data. The interrogation program shall have the ability to perform a search based at least on the following:

- (a) Date and time range;
- (b) Unique component identification number; and
- (c) Significant event identifier.

(17) Storage Medium Backup: The electronic raffle system shall have sufficient redundancy and modularity so that if any

single component or part of a component fails, the raffle can continue. Redundant copies of critical data shall be kept on the electronic raffle system with open support for backups and restoration.

(a) All storage shall be through an error checking, nonvolatile physical medium, or an equivalent architectural implementation, so that should the primary storage medium fail, the functions of the electronic raffle system and the process of auditing those functions can continue with no critical data loss.

(b) The database shall be stored on redundant media so that no single failure of any portion of the system would cause the loss or corruption of data.

(18) Recovery Requirements. In the event of a catastrophic failure when the electronic raffle system cannot be restarted in any other way, it shall be possible to reload the electronic raffle system from the last viable backup point and fully recover the contents of that backup, including, but not limited to:

- (a) Significant Events;
- (b) Accounting information;
- (c) Reporting information; and
- (d) Specific site information such as employee files, raffle set-up, etc.

(19) Verification of System Software. System software components and modules shall be verifiable by a secure means at the system level denoting the program identification and version. The system shall have the ability to allow for an independent integrity check of the components and modules from an outside source and is required for all software that may affect the integrity of the system. This must be accomplished by being authenticated by a third-party device, or by allowing for removal of the media such that it can be verified externally. This integrity check shall provide a means for field verification of the system components and modules to identify and validate the programs or files. The independent testing laboratory, prior to system approval, shall approve the integrity check method.

Section 10. Electronic Raffle System Communication Requirements. (1) Communication Protocol: Each component of an electronic raffle system must function as indicated by the communication protocol implemented. An electronic raffle system must provide for the following:

(a) Communication between all system components must provide mutual authentication between the component and the server.

(b) All protocols must use communication techniques that have proper error detection and recovery mechanisms, which are designed to prevent eavesdropping and tampering. Any alternative implementations will be reviewed on a case-by-case basis, with regulatory approval; and

(c) All data communications critical to the raffle shall employ encryption. The encryption algorithm shall employ variable keys, or similar methodology to preserve secure communication.

(2) Connectivity: Only authorized devices shall be permitted to establish communications between any system components. Electronic raffle systems shall provide a method to:

(a) Verify that the system component is being operated by an authorized user;

(b) Enroll and un-enroll system components;

(c) Enable and disable specific system components.

(d) Ensure that only enrolled and enabled system components participate in the raffle; and

(e) Ensure that the default condition for components shall be un-enrolled and disabled.

(3) Loss of Communications: Raffle sales units (RSUs) may continue to sell tickets when not in communication with the system. Sales taking place on the RSU during a loss of communication with the system shall be logged on the device. The RSU shall deactivate upon detecting the limit of its buffer overflow. Upon the re-establishment of communication, the system shall require the RSU to re-authenticate with the server(s). All tickets sold during communication loss shall be transmitted to the system. Loss of communications shall not affect the integrity of critical memory.

(4) System Security: All communications, including remote

access, must pass through at least one approved application-level firewall and must not have a facility that allows for an alternate network path. Any alternate network path existing for redundancy purposes must also pass through at least one application-level firewall.

(5) Firewall Audit Logs. The firewall application must maintain an audit log and must disable all communications and generate a significant event which meets the requirements as specified in Section 9(13) if the audit log becomes full. The audit log shall contain:

(a) All changes to configuration of the firewall;

(b) All successful and unsuccessful connection attempts through the firewall; and

(c) The source and destination IP Addresses, Port Numbers and MAC Addresses.

(6) Remote Access. "Remote access" means any access from outside the system or system network including any access from other networks within the same establishment. The electronic raffle system shall have the option to disable remote access. Remote access shall accept only the remote connections permissible by the firewall application and electronic raffle system settings. In addition, there shall be:

(a) No unauthorized remote user administration functionality, such as adding users, or changing permissions;

(b) No unauthorized access to any database other than information retrieval using existing functions;

(c) No unauthorized access to the operating system; and

(d) For systems using an electronic random number generator, the electronic raffle system must immediately detect remote access.

(7) The system manufacturer may, as needed, remotely access the electronic raffle system and its associated components for the purpose of product and user support..

(8) Remote Access Auditing. The electronic raffle system must maintain an activity log which updates automatically depicting all remote access information, to include:

(a) Log on name;

(b) Time and date the connection was made;

(c) Duration of connection; and

(d) Activity while logged in, including the specific areas accessed and changes that were made.

(9) Wide Area Network Communications. Wide Area Network ("WAN") communications are permitted as allowed by the regulatory body and shall meet the following requirements:

(a) The communications over the WAN are secured from intrusion, interference and eavesdropping via techniques such as use of a Virtual Private Network (VPN) or encryption; and

(b) Only functions documented in the communications protocol shall be used over the WAN. The protocol specification shall be provided to the Testing Laboratory.

(10) Wireless Network Communications. If a wireless communication solution is utilized, it shall adhere to the following requirements:

(a) Segregation of Networks. Networks used by the electronic raffle systems should be separate and not include other devices that are not part of the electronic raffle system.

(b) Service Set Identifier (SSID). The wireless network name (SSID) used to identify the wireless network should be hidden and not broadcast.

(c) Media Access Control (MAC) Address Filtering. The wireless network should use MAC address filtering as means to validate whether or not a device may connect to the wireless network.

(d) Device Registration. The electronic raffle system should use a device registration method as means to validate whether or not a device is an authorized device on the electronic raffle system.

Section 11. Online Raffle Ticket Sales. (1) All systems used for the sale of raffle tickets through the Internet must meet the requirements contained within this document and the terms and conditions set forth by these regulations for the sale of raffle tickets through the Internet.

(2) Definitions:

(a) "Access control" means the restriction of access to a place or other resource. Locks and login credentials are two mechanisms of access control.

(b) "Address Resolution Protocol ('ARP') is the protocol used to translate IP addresses into MAC addresses to support communication on a LAN ("Local Area Network"). The Address Resolution Protocol is a request and reply protocol and it is communicated within the boundaries of a single network, never routed across internetwork nodes (connection points, either a redistribution point or an end point for data transmissions).

(c) "Algorithm" means a finite set of unambiguous instructions performed in a prescribed sequence to achieve a goal, especially a mathematical rule or procedure used to compute a desired result. Algorithms are the basis for most computer programming.

(d) "Authentication" means a security measure designed to protect a communications system against acceptance of a fraudulent transmission or simulation by establishing the validity of a transmission, message or originator.

(e) "Bi-Directional" means the ability to move, transfer or transmit in both directions.

(f) "Counterfoil" means an electronic record or paper ticket stub, also known as a barrel ticket, which will be drawn to determine a winner and contains a player's draw number matching the bearer ticket purchased and may, depending on the type of raffle, contain the name, address, or telephone number of the player.

(g) "Crypto-analytic" means an attack against the encryption key (refer to definition of encryption key).

(h) "Cryptographic" means anything written in a secret code, cipher, or the like.

(i) "Distributed Denial of Service ('DDoS') means a type of Denial of Service ("DoS") attack where multiple compromised systems, usually infected with a destructive software program, are used to target a single system causing a Denial of Service (DoS) attack. Victims of a DDoS attack consist of both the end targeted system and all systems maliciously used and controlled by the hacker in the distributed attack.

(j) "Domain" is a term used to identify one or more IP addresses. A domain name is used in a Uniform Resource Locator ("URL") to identify particular Web pages.

(k) "Encryption" means the reversible transformation of data from the original (the plaintext) to a difficult-to-interpret format (the ciphertext) as a mechanism for protecting its confidentiality, integrity and sometimes its authenticity.

(l) "Encryption key" means a sequence of numbers used to encrypt or decrypt (to decode/decipher) data.

(m) "Firewall" means any number of security schemes that prevent unauthorized users from gaining access to a computer network or that monitor transfers of information to and from the network.

(n) "Geolocation" means identifying the real-world geographic location of an Internet connected computer, mobile device, or website visitor.

(o) "Host" means a computer system that is accessed by a user working at a remote location. Typically, the term is used when there are two computer systems connected by modems and telephone lines. The system that contains the data is called the host, while the computer at which the user sits is called the remote terminal. A computer that is connected to a TCP/IP network, including the Internet. Each host has a unique IP address.

(p) "Hypertext Transfer Protocol ('HTTP') means the underlying protocol used by the World Wide Web. HTTP defines how messages are formatted and transmitted, and what actions Web servers and browsers should take in response to various commands.

(q) "Internet" means an interconnected system of networks that connects computers around the world via the TCP/IP protocol. TCP/IP protocol is short for Transmission Control Protocol/Internet Protocol, the suite of communications protocols used to connect hosts on the Internet.

(r) "Intrusion Detection System ('IDS') or "Intrusion Prevention System ('IPS') means a system that inspects all inbound and outbound network activity and identifies suspicious

patterns that may indicate a network or system attack from someone attempting to break into or compromise a system. Used in computer security, intrusion detection refers to the process of monitoring computer and network activities and analyzing those events to look for signs of intrusion in a system.

(s) "Internet Protocol ('IP') means an identifier for a computer or device on a TCP/IP network.

(t) "Media Access Control ('MAC') means hardware address that uniquely identifies each node, such as computer or printer, of a network.

(u) "Man-in-the-Middle ('MITM') means an active Internet attack where the person attacking attempts to intercept, read or alter information moving between two computers.

(v) "Message authentication means a security measure designed to establish the authenticity of a message by means of an authenticator within the transmission derived from certain predetermined elements of the message itself.

(w) "Online" means being connected to the Internet.

(x) "Online Purchasing Platform" means the raffle system hardware and software which drives the features common to all raffles offered, and which forms the primary interface to the Raffle System for both the patron and the operator. The online purchasing platform provides the patron with the means to register an account, log in to/out of their account, modify their account information, make ticket purchases, request account activity statement/reports, and close their account. In addition, any web pages displayed to the patron that relate to ticket purchasing offered on the raffle system. The online purchasing platform provides the operator with the means to review patron accounts, enable or disable raffles, generate various financial transaction and account reports, input raffle outcomes, enable or disable patron accounts, and set any configurable parameters.

(y) "Protocol" means a set of formal rules describing how to transmit or exchange data, especially across a network. TCP/IP is the standard communications protocol of the Internet and most internal networks.

(z) "Shellcode" means a small piece of code used as the payload (cargo of data transmission) in the exploitation of computer security. Shellcode exploits a vulnerability and allows an attacker the ability to reduce a computer system's information assurance.

(aa) "Security certificate" means information, often stored as a text file, which is used by the Secure Socket Layers ("SSL") protocol to establish a secure connection. A security certificate contains information about whom it belongs to, who it was issued by, valid dates, a unique serial number or other unique identification that can be used to verify the contents of the certificate. In order for an SSL connection to be created, both sides must have a valid security certificate, which is also called a digital ID.

(bb) "Stateful firewall" means a firewall that keeps track of the state of network connections traveling across it. The firewall is programmed to distinguish legitimate packets for different types of connections. Only packets matching a known active connection will be allowed by the firewall; others will be rejected. Stateful inspection, also referred to as Dynamic Packet Filtering, is a security feature often included in business networks.

(cc) "Stateless" means a communications protocol that treats each request as an independent transaction that is unrelated to any previous request so that the communication consists of independent pairs of requests and responses. A stateless protocol does not require the server to retain session information or status about each communications partner for the duration of multiple requests. In contrast, a protocol which requires the keeping of internal state is known as a stateful protocol. Examples of stateless protocols include Internet Protocol (IP) and the Hypertext Transfer Protocol (HTTP).

(2) All online raffle ticket sales systems, software and database requirements must be tested and certified by an independent testing laboratory to meet the applicable requirements set forth in this document and approved by the department.

(3) Operation manuals and service manuals must be expressed in broad terms that are directly relevant to the system used to sell raffle ticket(s) through the Internet and must be

provided at the request of the Department.

(4) Geolocation: The raffle system, online purchasing platform or the patron device must be able to reasonably detect the physical location of an authorized patron attempting to access the service. Third parties may be used to verify the location of patrons.

(5) Inventory: When issued a charitable gaming license to conduct a raffle, the charitable organization shall provide the number of raffle tickets available for sale through the Internet. The raffle system software shall have the ability to set time limits for which tickets may be purchased. Upon completion of the sale of the final raffle ticket for a charitable organization raffle, the raffle must close.

(6) Systems used by the purchaser to obtain raffle ticket(s) through the Internet must be designed to be reasonably impervious to communication errors. Personally identifiable information, sensitive account data and financial information shall be protected over a public network.

(7) Asset Management: All assets housing, processing of communication controlled information, including those comprising the operating environment of the Raffle system and/or its components, should be accounted for and have a designated "owner" responsible for ensuring that information and assets are appropriately classified, and defining and periodically reviewing access restrictions and classifications.

(8) Raffle Equipment Security: Raffle system servers must be located in server rooms which restrict unauthorized access. Raffle system servers shall be housed in racks located within a secure area.

(9) Network Security Management: To ensure Purchasers are not exposed to unnecessary security risks by choosing to participate in raffles, these security requirements must apply to the following critical components of the raffle system:

(a) Raffle system components which record, store, process, share, transmit or retrieve sensitive Purchaser information, e.g. credit card/debit card details, authentication information, patron account balances;

(b) Raffle system components which store results of the current state of a Purchaser's purchase order;

(c) Points of entry to and exit from the above systems (other systems which are able to communicate directly with the core critical systems); and

(d) Communication networks which transmit sensitive patron information.

(10) Networks should be logically separated such that there should be no network traffic on a network link which cannot be serviced by hosts on that link.

(a) The failure of any single item should not result in denial of service;

(b) An Intrusion Detection System/Intrusion Prevention System must be installed on the network which can:

1. Listen to both internal and external communications;

2. Detect or prevent Distributed Denial of Services ("DDoS") attacks;

3. Detect or prevent shellcode from traversing the network;

4. Detect or prevent Address Resolution Protocol ("ARP") spoofing; and

5. Detect other Man-in-the-Middle indicators and server communications immediately if detected.

(c) Stateless protocols should not be used for sensitive data without stateful transport (HTTP is allowed if it runs on TCP).

(d) All changes to network infrastructure must be logged;

(e) Virus scanners or detection programs should be installed on all pertinent information systems. These programs shall be updated regularly to scan for new strains of viruses;

(f) Network security shall be tested by a qualified and experienced individual at least once per year; and

(g) Testing shall include testing of the external (public) interfaces and the internal network.

(h) Testing of each security domain on the internal network shall be undertaken separately.

(11) Communication Protocol: Online raffle tickets offered for sale by a charitable organization shall support a defined communication protocol that ensures purchasers are not exposed

to unnecessary security risks when using the Internet for this purpose. Each component of a raffle system must function as indicated by the communication protocol implemented. The system must provide for the following:

(a) All critical data communication shall be protocol based or incorporate an error detection and correction scheme to ensure accuracy of messages received;

(b) All critical data communication shall employ encryption. The encryption algorithm shall employ variable keys or similar methodology to preserve secure communication;

(c) Communication between all system components must provide mutual authentication between the component and the server;

(d) All protocols shall use communication techniques that have proper error detection and recovery mechanisms, which are designed to prevent eavesdropping and tampering.

(e) All data communications critical to raffle ticket sales through the Internet shall employ encryption. The encryption algorithm shall employ variable keys, or similar methodology to preserve secure communication.

(12) Remote Access: Remote access means any access from outside the system or system network including any access from other networks within the same establishment. Remote access shall only be allowed with prior written approval of the department and shall have the option to be disabled. Where allowed, remote access shall accept only the remote connections permissible by the firewall application and online raffle ticket sales settings. In addition, there shall be:

(a) No authorized remote user administration functionality;

(b) No authorized access to any database other than information retrieval using existing functions;

(c) No authorized access to the operating system; and

(d) The raffle system must maintain an activity log which updates automatically depicting all remote access information.

(13) Error Recovery: The system used by a licensed charitable organization to offer the sale of raffle ticket(s) through the Internet must be able to recover messages when they are received in error. This would include inaccurately inputting personal/banking information which would result in the Purchaser being notified that the information is invalid and must require review and corrective measures. In the event of a catastrophic failure when the system cannot be restarted in any other way, it shall be possible to reload the system information from the last viable backup point and fully recover the contents of that backup, including, but not limited to:

(a) Significant events;

(b) Accounting information;

(c) Reporting information; and

(d) Specific site information, including but not limited to employees file and the raffle set-up.

(14) Bi-Directional Requirements: Any system used to sell raffle ticket(s) through the Internet shall be tested by an independent testing laboratory, who shall certify that:

(a) The physical network is designed to provide exceptional stability and limited communication errors;

(b) The system is stable and capable of overcoming and adjusting for communication errors in a thorough, secure and precise manner; and

(c) Information is duly protected with the most secure forms of protection via encryption, segregation of information, firewalls, passwords and personal identification numbers.

(15) Encryption: Security messages that traverse data communications lines must be encrypted using an encryption key or keys to ensure that communications are demonstrably secure against crypto-analytic attacks. The encryption keys or keys used to provide security to the system that provide for the sale of raffle tickets through the Internet must be monitored and maintained. Additionally, there must be a documented process for:

(a) Obtaining or generating encryption keys;

(b) Managing the expiry of encryption keys if encryption keys;

(c) Revoking encryption keys;

(d) Securely changing the current encryption keyset;

(e) The storage of any encryption keys; and

(f) To recover data encrypted with a revoked or expired

encryption key for a defined period of time after the encryption key becomes valid.

(16) Cryptographic Controls: Cryptographic controls shall be implemented for the protection of the following information:

(a) Any sensitive or personally identifiable information shall be encrypted if it traverses a network with a lower level of trust;

(b) Data that is not required to be hidden but must be authenticated shall use some form of message authentication technique;

(c) Authentication must use a security certificate from an organization approved by the independent testing laboratory;

(d) The grade of encryption used should be appropriate to the sensitivity of the data;

(e) The use of encryption algorithms shall be reviewed periodically by qualified Management staff to verify that the current encryption algorithms are secure;

(f) Changes to encryption algorithms to correct weaknesses shall be implemented as soon as practical. If no such changes are available, the algorithm shall be replaced; and

(g) Encryption keys must not be stored without being encrypted themselves through a different encryption method and/or by using a different encryption key.

(17) Firewalls. All online raffle systems shall utilize firewalls that comply with the following provisions:

(a) A firewall shall be located at the boundary of any two dissimilar security domains.

(b) All connections to hosts used for the sale of raffle tickets through the Internet shall be housed in a secure data center and must pass through at least one application-level firewall. This includes connections to and from any non-related hosts used by the operator.

(c) The firewall shall be a separate hardware device with the following characteristics:

1. Only firewall-related applications may reside on the firewall; and

2. Only a limited number of accounts may be present on the firewall.

(d) The firewall shall reject all connections except those that have been specifically approved.

(e) The firewall shall reject all connections from destinations which cannot reside on the network from which the message originated.

(f) The firewall shall maintain an audit log of all changes to parameters which control the connections permitted through the firewall.

(g) The firewall shall maintain an audit log of all successful and unsuccessful connection attempts. Logs should be kept for 90 days and a sample reviewed monthly for unexpected traffic.

(h) The firewall shall disable all communication if the audit log becomes full.

(18) Firewall Audit Logs: The audit log shall contain:

(a) All changes to configuration of the firewall;

(b) All successful and unsuccessful attempts through the firewall; and

(c) The source and destination IP addresses, port numbers and MAC addresses.

(19) System Clock: The system used for the sale of raffle tickets through the Internet shall maintain an internal clock that reflects the current date and time that shall be used for the following:

(a) Time stamping of significant events;

(b) Reference clock for reporting; and

(c) Time stamping of all sales.

(20) Purchase Session: A purchase session consists of all activities and communications performed by a purchaser during the time the purchaser accesses the raffle system or online purchasing platform. Tickets sold online shall only be purchased during a purchase session.

(21) Purchasing Tickets: A participant may purchase a raffle ticket from the website by following the instructions appearing on the screen and providing payment for the tickets. Each raffle ticket must be sold individually for the price indicated. Multiple discounted prices will only be allowed if a way of ensuring financial accountability is possible by the online purchasing

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platform or raffle system:

(a) A ticket purchase via a credit card transaction or other methods which can produce a sufficient audit trail must not be processed until such time as the funds are received from the issuer or the issuer provides an authorization number indicating that the purchase has been authorized;

(b) There must be a clear notification that the purchase has been accepted by the system and the details of the actual purchase accepted must be provided to the patron once the purchase is accepted; and

(c) Purchase confirmation shall include the amount of the purchase accepted by the raffle system or online purchasing platform.

(22) Disputes: The raffle system or online purchasing platform must conspicuously provide a mechanism to advise the patron of the right to make a complaint against the operator and to enable the patron to notify the department of such a complaint.

(23) Bearer Ticket Issuance: After the payment of a fee, the Purchaser shall receive a receipt through the Internet that the purchase of a raffle ticket or tickets is complete. Upon receiving the receipt acknowledging the purchase through the Internet, the purchaser may receive the raffle ticket via e-mail. The receipt acknowledging purchase and the issuance of the raffle tickets through the Internet must be processed as two (2) separate transactions.

(24) Validation Numbers: The method used by the raffle system to generate the bearer ticket validation number must be unpredictable and ensure against duplicate validation numbers for the raffle currently in progress.

(25) Voiding a Ticket: If a ticket is voided, the appropriate information shall be recorded, which includes the draw numbers and the validation number pertaining to the voided ticket. Voided draw numbers shall not be able to be resold or reissued.

(26) Raffle Drawing Requirements

(a) A raffle drawing shall be held the date, time, and place stated on the organization's license or certificate of exemption.

(b) The operator shall conduct a manual or electronic draw procedure which ensures a randomly selected draw number as a winner from all the tickets sold. Each drawn counterfoil shall be verified as a sold and valid ticket. Voided tickets shall not be qualified toward any prize. This process shall be repeated for each advertised prize.

(c) Results of the drawing become official and final after the drawn number is verified as a winning raffle ticket for the respective drawing and is presented to the participants for the raffle. The winning draw number shall be made available on the raffle website for the participants to review. Operators may utilize any additional methods in presenting the winning draw number(s) to the participants.

(27) Accounting Requirements: Any system used for the sale of raffle tickets through the Internet must have the capability to log sales and to print reports detailing sales and accounting information for specific dates and time periods must be available. This information shall include, but is not limited to, the price of each raffle ticket, number of raffle tickets sold, and total sales. The system or other equipment shall be capable of producing accounting reports to include the following information:

(a) Data required to be maintained for each raffle drawing, including:

1. Date and time of event;
2. Organization running the event;
3. Sales information;
4. Value of prize(s) awarded;
5. Prize distribution;
6. Refund totals of event
7. Draw numbers-in-play;
8. Winning number(s) drawn (including draw order, call time and claim status); and
9. Any other information required by 820 KAR 1:057.

(b) Exception Report: A report which includes system exception information, including, but not limited to, changes to system parameters, corrections, overrides and voids.

(c) Bearer Tickets Reports: A report which includes a list of all bearer tickets sold including all associated draw numbers and

selling price.

(d) Sales Report: A report which includes a breakdown of sales of raffle ticket(s) through the Internet, including draw numbers sold and any voided and misprinted tickets.

(e) Voided Draw Number Report: A report which includes a list of all draw numbers that have been voided including corresponding validation numbers.

(f) Event Log: A report which lists all events recorded specific to the sales of raffle ticket(s) through the Internet. This will include the date and time of the transaction and a brief description of the transaction and/or identifying code.

(g) Corruption Log: A report which lists all Internet transactions that were unable to be reconciled to the system.

(28) Sales and Accounting Report Requirements: Any raffle ticket sold must be included in the sales and accounting reports and be detailed in all financial transactions on the system. In addition, a log relating to accounting and raffle ticket sales must be maintained on the system. The charitable organization conducting the raffle shall be given the option of printing this log on demand.

(29) Backup Requirements: Any system used for the sale of raffle ticket(s) through the Internet must have a backup and archive utility to allow the licensed charitable organization, conducting the raffle, the ability to save critical data should a system failure occur. This backup can be automatically run by the charitable organization.

(30) Data Alteration: The alteration of any accounting, reporting or significant event data related to the sale of raffle tickets through the Internet shall include supervised access controls. In the event any data is changed, the following information shall be logged, documented, stored and available upon request for review:

- (a) Data element altered;
- (b) Data element value prior to alteration;
- (c) Data element value after alteration;
- (d) Time and date of alteration; and
- (e) User login of the personnel that performed the alteration.

(31) Access Controls: The allocation of access privileges shall be restricted and controlled on business requirements and the principle of least privilege.

(a) A formal user registration and de-registration procedure must be in place for granting and revoking access to all information systems and services.

(b) All users shall have a unique identifier (user ID) for their personal use only, and a suitable authentication technique shall be chosen to substantiate the claimed identity of a user.

(c) The use of generic accounts shall be limited, and where used for reasons for their use shall be formally documented.

(d) Password provision must be controlled through a formal management process.

(e) Passwords must meet business requirements for length, complexity and lifespan.

(f) Access to system applications shall be controlled by a secure log-on procedure.

(g) Appropriate authentication methods, in addition to passwords, shall be used to control access by remote users

(h) Any physical access to areas housing components used for the sale of raffle ticket(s) through the Internet application and any logical access to these applications must be recorded.

(i) The use of automated equipment identification to authenticate connections from specific locations and equipment shall be formally documented and must be included in the regular review of access by Management.

(j) Restrictions on connection times shall be used to provide additional security for high-risk applications.

(k) The use of utility programs that might be capable of overriding system application controls shall be restricted and tightly controlled.

(l) A formal policy shall be in place and appropriate security measures shall be adopted to protect against the risks of using mobile computing and communication facilities.

(32) Purchaser Account Registration: The raffle system or online purchasing platform must employ a mechanism to collect purchaser information prior to registration of a purchaser account.

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The purchaser must be fully registered, and the purchaser's account must be activated prior to permitting ticket purchases. Once the identity verification is successfully complete, and the purchaser has acknowledged all of the necessary privacy policies and the terms and conditions, the purchaser account registration is complete and the patron account can become active.

(33) Third Party Services: Any third-party service providers contracted to provide service involving accessing, processing, communicating or managing the sale of raffle tickets through the Internet must adhere to information contained in this document. The security roles and responsibilities of third party service providers should be defined and documented as it relates to the security of information.

(a) Agreements with third party service providers involving accessing, processing, communicating or managing the purchase of on-line raffle tickets through the Internet/or its components, or adding products or services to the system used/or its components shall cover all relevant security requirements.

(b) The services, reports and records provided by the third party shall be monitored and reviewed by the Department upon request.

(c) Changes to the provision of services, including maintaining and improving existing information security policies, procedures and controls, shall be managed, taking account of the criticality of business systems and processes involved and re-assessment of risks.

(d) The access rights of third party service providers to the system and/or its components shall be removed upon termination of their contract or agreement, or adjusted upon change.

This is to certify that this administrative regulation was distributed for review and comment to the Charitable Gaming Advisory Commission prior to its adoption, as required by KRS 238.522(1).

AMBROSE WILSON IV, Deputy Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: May 22, 2020

FILED WITH LRC: May 22, 2020 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on August 26, 2020, at 11:00 a.m., in Room 133 CE of the Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. At the time of filing this amendment, all state government offices are closed to in-person services. A public hearing will be held if state government offices open to in-person services by August 26, 2020. An alternative method will be utilized if state government offices are closed. Individuals interested in being heard must notify this agency in writing five (5) working days prior to the hearing of their intent to be heard. Instructions for an alternative method will be provided. Instructions for an alternative method will be provided. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing, if held, is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 p.m. on July 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Doug Hardin, Staff Attorney, Department of Charitable Gaming, 500 Mero Street 2NW24, Frankfort, Kentucky 40601; phone (502) 782-8204; fax (502) 573-6625; doug.hardin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Doug Hardin, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation allows charitable organizations to utilize electronic raffle systems and online raffle systems.

(b) The necessity of this administrative regulation: In light of the COVID-19 pandemic, the cabinet secretary has signed two executive orders relating to charitable gaming. One order suspended all charitable gaming activities in the Commonwealth, and a subsequent order created a narrow exception to allow charitable organizations to sell raffle tickets online and conduct their drawings online. This regulatory amendment helps organization generate revenue while conforming to these executive orders. Additionally, the existing raffle regulations require charitable organizations to print tickets and draw a winner from a physical receptacle, and these amendments allow organizations to utilize modern technology in the conduct of raffles.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Raffles are included in the definition of charitable gaming in KRS 238.505(2). Nothing in this regulation is inconsistent with the definition of raffle in KRS 238.505(7) or the statutory requirements for a raffle found in KRS 238.545(3).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes standards for the conduct of raffles utilizing modern technology and establishes procedures to verify the fairness of these raffles.

(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 regulation gives charitable organization additional methods for conducting a raffle draw and therefore no longer requires them to print paper tickets and physically draw a ticket from a receptacle.

(b) The necessity of the amendment to this administrative regulation: Charitable organizations that rely on charitable gaming as a source of fundraising have seen a significant reduction in revenue as a result of the suspension of charitable gaming. This regulation, along with the secretary's order mentioned in response to question (1) above, gives the charitable organization an option to generate revenue during the current state of emergency. Even after the State of Emergency ends, this regulation will likely reduce operating costs by allowing organizations to utilize a computer software to conduct raffles without having to incur the costs of printing paper tickets.

(c) How the amendment conforms to the content of the authorizing statutes: Raffles are included in the definition of charitable gaming in KRS 238.505(2). Nothing in this regulation is inconsistent with the definition of raffle in KRS 238.505(7) or the statutory requirements for a raffle found in KRS 238.545(3).

(d) How the amendment will assist in the effective administration of the statutes: This regulation establishes standards for the conduct of raffles utilizing online raffle systems and electronic raffle systems. This regulations and establishes procedures and technical standards to verify the fairness of these systems.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation would affect the Public Protection Cabinet, the Department of Charitable Gaming, and the Department's licensees and exempt organizations. The Department currently has 551 licensed charitable organizations and 831 charitable organizations that possess a certificate of exemption. All of these organizations would be eligible to conduct raffles in the manner allowed by this regulatory amendment. Currently the Department has 22 licensed charitable organizations who are conducting online raffles pursuant to the secretary's order of March 25, 2020. The Department also currently licenses 21 manufacturers and 17 distributors.

(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 comply with this administrative regulation or amendment. Manufacturers will have to have their electronic raffle systems and online raffle systems certified as compliant by an independent testing lab. Distributors will be allowed to sell or lease these systems to charities for use in licensed raffle activities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensees who choose to conduct electronic raffles pursuant to this regulatory amendment will have to purchase their system from a licensed distributor, and the system will have to be created by a licensed manufacturer. Purchasing the system will likely cost the charities money on the front end, but it could reduce costs in the long-run by eliminating the need to print hundreds or thousands of tickets.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will save licensees money since they will no longer be required to print paper tickets or purchase a physical receptacle from which to draw the winning ticket.

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

(a) Initially: There are no anticipated additional initial costs to administer this emergency administrative regulation.

(b) On a continuing basis: There are no anticipated additional initial costs to administer this emergency administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this emergency administrative regulation is not anticipated to result in additional costs to the Public Protection Cabinet.

(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 emergency administrative regulation will not necessitate an increase in fees or require funding to the Public Protection Cabinet for implementation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because all applicants will be subject to the application and eligibility requirements established by the emergency administrative regulation equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Protection Cabinet and Department of Charitable Gaming

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 238.505, KRS 238.500, and KRS 238.545.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This emergency administrative regulation could result in a nominal increase in revenue for the Department from the charitable gaming fee applied to the licensee's gross receipts from the sale of raffle tickets.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This emergency administrative regulation could result in a nominal increase in revenue for the Department from the charitable gaming fee applied to the licensee's gross receipts from the sale of raffle tickets.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional initial costs to administer this emergency administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional initial costs to administer this emergency administrative regulation.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(Amendment)**

902 KAR 2:020. Reportable disease surveillance.

RELATES TO: KRS 211.180(1), 214.010, 214.645, 215.520, 216B.015, 258.065, 258.990, 311.282, 311.571, 315.010, 333.020, 333.130

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 211.180(1)(a), 214.010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180(1)(a) requires the cabinet to implement a statewide program for the detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other diseases and health hazards that may be controlled. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet. This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases, and to permit an accurate assessment of the health status of the Commonwealth.

Section 1. Definitions. (1) "Acid fast bacilli" or "AFB" means the mycobacteria that, if stained, retains color even after they have been washed in an acid solution and may be detected under a microscope in a stained smear.

(2) "Authorize" means for a healthcare facility that participates in the Centers for Medicare and Medicaid (CMS) reporting to confer rights to the Kentucky Department for Public Health in the NHSN database,

~~(3)[at the healthcare facility level.~~

~~(2)] "Health facility" is defined by KRS 216B.015(13).~~

~~(4)[(3)] "Health professional" means a professional licensed under KRS Chapters 311 through 314.~~

~~(5)[(4)] "Healthcare-associated infection" or "HAI" means an infection acquired by a person while receiving treatment for a separate condition in a health care setting.[~~

~~(5) "HIV case report" means an HIV infection or AIDS diagnosis which:~~

~~(a) Has been confirmed by laboratory test results; or~~

~~(b) Meets the definition of AIDS established within the Centers for Disease Control and Prevention (CDC) guidelines.]~~

~~(6) "Kentucky [Department for] Public Health Advisory" means a notification to health professionals, health facilities, and laboratories subject to this administrative regulation identifying a new health threat that warrants reporting through the procedures of this administrative regulation.~~

~~(7) "Laboratory-confirmed influenza" means influenza diagnosed through testing performed using one (1) of the following methods:~~

~~(a) Reverse transcriptase polymerase chain reaction (RT PCR);~~

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(b) Nucleic acid detection; or

(c) Viral culture.

(8) "Medical laboratory" is defined by KRS 333.020(3).

(9)(8) "National Healthcare Safety Network" or "NHSN" means the nation's most widely used healthcare-associated infection (HAI) tracking system as provided to medical facilities by the CDC[Centers for Disease Control and Prevention].

(10)(9) "National reference laboratory" means a laboratory located outside of Kentucky that is[which has been] contracted by a Kentucky health professional, laboratory, or healthcare facility to provide laboratory testing.

(11) "Novel influenza A virus" means an influenza virus that causes human infection but is different from the seasonal human influenza A virus subtypes and includes viruses predominately of avian and swine origin.

(12) "Nucleic acid amplification test" or "NAAT" means the laboratory test used to target and amplify a single deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) sequence, usually for detecting a microorganism.

(13)(40) "Outbreak" means:

(a) Two (2) or more cases, including HAIs, that are epidemiologically linked or connected by person, place, or time; or

(b) A single case of an HAI not commonly diagnosed.

(14)(41) "Pharmacist" is defined by[means a professional licensed under] KRS 315.010(17).

(15) "Post-exposure prophylaxis" or "PEP" means taking an antiretroviral medicine after being potentially exposed to HIV to prevent becoming infected.

(16) "Pre-exposure prophylaxis" or "PrEP" means daily medicine intended to reduce the chance of getting HIV.

(17)(42) "Select agent" means a biological agent or toxin that could pose a severe threat to public health, plant health, animal product, or plant product as determined by the National Select Agent Registry (NSAR) at www.selectagents.gov.

(18)(43) "Veterinarian" is defined by[means a professional licensed under] KRS 321.181(4).

Section 2. Notification Standards. (1) Health Professionals and Facilities.

(a) A health professional or[and] a health facility shall give notification if:

1.(a) The health professional or a health facility makes a probable diagnosis of a disease specified in Section 3, [5,] 6, 7, 8, 9, 12, 16, 17, 18, or 19[40, 43, 44, 45, or 46] of this administrative regulation; and

2.(b) The diagnosis is supported by:

a.(i)[1.a.] Clinical or laboratory criteria; and

(ii)[b.] Case classifications published by the Centers for Disease Control and Prevention at wwwn.cdc.gov/nndss; or

b.[2.] A health professional's medical opinion that the disease is present.

(b)(2) A single report by a health facility of a condition diagnosed by a test result from the health facility's laboratory shall constitute notification on behalf of the health facility and its laboratory.

(c)(3) A health facility may designate an individual to report on behalf of the health facility's laboratory, pharmacy, and the health facility's other clinical entities.

(d)(4) Notification shall be given to the local health department serving the county[jurisdiction] in which the patient resides.

(e)(5) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(f)(6) The reporting health professional or health facility shall furnish:

1.(a) Information required in Section 5(6)[4(46)] of this administrative regulation; and

2.(b) Clinical, epidemiologic, and laboratory information pertinent to the disease including sources of specimens submitted for laboratory testing.

(2)(7) Medical Laboratories.

(a)[Upo] A laboratory test result that[which] indicates infection with an agent associated with one (1) or more of the

diseases or conditions specified in Section 3, [5,] 6, 7, 8, 9, 12, 16, 17, 18, or 19[40, 43, 44, 45, or 46] of this administrative regulation shall be reported [, the laboratory shall report the result] to the local health department serving the county in which the patient resides.

(b)(8) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(c)(9) The reporting laboratory shall furnish the information required in Section 5(6)[4(46)] of this administrative regulation.

(3)(40) National Reference Laboratories.

(a)[Upo] A test result performed by a national reference laboratory that[which] indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, [5,] 6, 7, 8, 9, 12, 16, 17, 18, or 19[40, 43, 44, 45, or 46] of this administrative regulation shall be reported by[.] the director of a medical laboratory, a health facility, or the health professional that referred the test to the national reference laboratory [shall ensure that the result is reported by the national reference laboratory] to the local health department serving the county[jurisdiction] in which the patient resides.

(b)(41) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(c)(42) The report shall include the information required by Section 5(6)[4(46)] of this administrative regulation.

Section 3. Submission of Specimens to the Kentucky Department for Public Health Division of Laboratory Services. (1) A medical laboratory and a national reference laboratory in receipt of diagnostic specimens originating from the Commonwealth of Kentucky shall send direct specimens or pure clinical isolates for diseases outlined in subsection (5) of this section to the Division of Laboratory Services for primary or confirmatory testing and related studies.

(2) A medical laboratory or national reference laboratory using non-culture techniques to identify bacterial agents of diarrheal disease, such as enzyme immunoassays (EIAs) or molecular assays, shall attempt isolation of the etiologic agent identified. Pure clinical isolates shall be submitted to the Division of Laboratory Services.

(3) If the culture attempts do not produce a clinical isolate, the direct specimen, submitted in the appropriate preservative, shall be sent to the Division of Laboratory Services. A submitting laboratory shall provide the name of the etiologic agent detected by the non-culture technique at the time of specimen submission.

(4) A medical laboratory performing this test shall continue to follow the state's requirement for the submission of appropriate materials to the state public health laboratory.

(5) A medical or national reference laboratory shall submit pure[clinical] isolates or, if not available, the direct specimen from the following diseases to the Division of Laboratory Services:

(a) Botulism, with prior approval from the Division of Epidemiology for testing;

(b) Brucellosis;

(c) Campylobacteriosis;

(d) Candida auris;

(e) Carbapenem-resistant Acinetobacter;

(f) Carbapenem-resistant Enterobacteriaceae;

(g) Carbapenem-resistant Pseudomonas;

(h) Cholera and diseases caused by other Vibrio species;

(i)(e) Diphtheria;

(j)(f) Escherichia coli O157:H7;

(k)(g) Hemolytic Uremic Syndrome (HUS) – Post Diarrheal;

(l)(h) Listeriosis;

(m)(i) Measles;

(n)(j) Meningococcal infections;

(o)(k) Rabies, animal;

(p)(l) Rubella;

(q)(m) Salmonellosis;

(r)(n) Shiga toxin-producing E. coli (STEC);

(s)(o) Shigellosis;

(t)(p) Tuberculosis;

(u)(q) Tularemia;

- (v) and
- (#) Typhoid fever;
- (w) Vancomycin-intermediate Staphylococcus aureus;
- (x) Vancomycin-resistant Staphylococcus aureus; and
- (y) Zika, with prior approval from the Division of Epidemiology for testing.

(6) All direct specimens or clinical isolates from enteric disease shall be submitted within seventy-two (72) hours from collection.

Section 4. Laboratory testing and submission of specimens to the Division of Laboratory Services for the identification of M. tuberculosis. (1) A medical laboratory or national reference laboratory shall perform AFB smear and culture, regardless of rapid molecular testing results (i.e. NAAT).

(2) Rapid molecular testing shall be performed for the identification of M. tuberculosis on:

(a) Any diagnostic specimen with an AFB smear positive result; or

(b) Any specimen that originates from an individual with clinical or epidemiological evidence suggesting active tuberculosis.

(3) If rapid molecular testing cannot be performed by the medical laboratory or national reference laboratory, the diagnostic specimen shall be sent to the Division of Laboratory Services.

(4) A medical laboratory or national reference laboratory that has a diagnostic specimen test positive for M. tuberculosis by rapid molecular testing shall send the remainder of that specimen to the Division of Laboratory Services.

(5) Any diagnostic specimen found to be positive for M. tuberculosis by rapid molecular testing or culture testing shall be reported in accordance with Section 7 of this administrative regulation.

Section 5. Reporting Classifications and Methods. (1) Immediate reporting.

(a) A report required by Section 12[10](1) and (2) of this administrative regulation to be made immediately shall be:

1. [(a)] Made by telephone to the local health department serving the county in which the patient resides; and

2. [(b)] Followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

(b) [(2)] Upon receipt of a report for a disease requiring immediate reporting, the local health department shall:

1. [(a)] Notify the Kentucky Department for Public Health by telephone; and

2. [(b)] Assist the department in carrying out a public health response.

(c) [(3)] Weekend, evening, or holiday immediate notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

(d) [(4)] For the protection of patient confidentiality, a report using the emergency number shall include:

1. [(a)] The name of the condition being reported; and

2. [(b)] A telephone number that can be used by the department to contact the reporting health professional or health facility.

(2) [(5)] Urgent Reporting.

(a) A report made within twenty-four (24) hours as required by Section 6[5] of this administrative regulation shall be:

1. [(a)] Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and

2. [(b)] If submitted by telephone, followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

(b) [(6)] Upon receipt of a report for a disease requiring urgent reporting, the local health department shall:

1. [(a)] Notify the Kentucky Department for Public Health; and

2. [(b)] Assist the department in carrying out a public health response.

(c) [(7)] Weekend, evening, or holiday urgent notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

(d) [(8)] For the protection of patient confidentiality, notification using the emergency number shall include:

1. [(a)] The name of the condition being reported; and

2. [(b)] A telephone number that can be used by the department to contact the reporting health professional or health facility.

(3) [(9)] Priority Reporting.

(a) A report made within one (1) business day as required by Section 7, 11, 12(3), 17(4), or 18[Sections 6, 14(4), and 15] of this administrative regulation shall be:

1. [(a)] Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and

2. [(b)] If submitted by telephone, followed up by electronic or fax submission of a report to the local health department serving the county in which the patient resides within one (1) business day.

(b) [(10)] Upon receipt of a report for a disease requiring priority reporting, a local health department shall:

1. [(a)] Investigate the report and carry out public health protection measures; and

2. [(b)] Notify the Kentucky Department for Public Health of the case by electronic or fax submission within one (1) business day.

(c) [(11)] The reporting health department may seek assistance in carrying out public health measures from the Kentucky Department for Public Health.

(4) [(12)] Routine Reporting.

(a) A report made within five (5) business days, as required by Section 8, 9, 10, 13(1), 16(1), 17(7), or 20(1)[Sections 7, 8, 9, 14(4), 13, 14(7), and 17] of this administrative regulation, shall be made electronically, by fax, or by mail to the local health department serving the county in which the patient resides.

(b) [(13)] Upon receipt of a report of a disease or condition requiring routine reporting, a local health department shall:

1. [(a)] Make a record of the report;

2. [(b)] Answer inquiries or render assistance regarding the report if requested by the reporting entity; and

3. [(c)] Forward the report to the Kentucky Department for Public Health by electronic or fax submission of a report, or in writing within five (5) business days.

(5) [(14)] General Reporting. A report made within three (3) months, as required by Section 19[16] of this administrative regulation, shall be made electronically, by fax, or by mail.

(6) Reporting requirements.

(a) [(15)] A report submitted by fax or by mail shall be made using one (1) of the following reporting forms:

1. [(a)] EPID 200, Kentucky Reportable Disease Form;

2. [(b)] EPID 250, Kentucky Reportable MDRO Form, to be used for priority reporting until electronic reporting is available pursuant to Section 9(1) of this administrative regulation;

3. [(c)] EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (aged five (5) years or less);

4. [(d)] EPID 399, Perinatal Hepatitis B Prevention Form for Infants;

5. [(e)] Adult HIV[AIDS] Confidential Case Report Form; or

6. [(f)] Pediatric HIV[AIDS] Confidential Case Report Form.

(b) [(16)] Information to be reported. Except as provided in subsections (1)(d)[(3)] and (2)(d)[(7)] of this section, a report required by this administrative regulation shall include:

1. [(a)] Patient name;

2. [(b)] Date of birth;

3. [(c)] Gender;

4. [(d)] Race;

5. [(e)] Ethnicity;

6. [(f)] Patient address;

7. [(g)] County of residence;

8. [(h)] Patient telephone number;

9. [(i)] Name of the reporting medical provider or facility;

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10. [(f)] Address of the reporting medical provider or facility; and

11. [(k)] Telephone number of the reporting medical provider or facility.

[(c)] [(47)] A reporting health professional shall furnish the information listed in this subsection [(16) of this section] and Section 2 [(1) (f)] [(6) (b)] of this administrative regulation.

Section 6 [(5)]. Notifiable Infectious Conditions Requiring Urgent Notification. (1) Notification of the following diseases shall be considered urgent and shall be made within twenty-four (24) hours:

[(a)] [(4)] Anthrax;

[(b)] [(2)] Botulism;

[(c)] [(3)] Brucellosis (multiple cases, temporally or spatially clustered);

[(d)] [(4)] Diphtheria;

[(e)] [(5)] Hepatitis A, acute;

[(f)] [(6)] Measles;

[(g)] [(7)] Meningococcal infections;

[(h)] Middle East Respiratory Syndrome-associated

Coronavirus (MERS-CoV) disease;

[(i)] Multi-system Inflammatory Syndrome in Children (MIS-C);

[(j)] [(8)] Novel influenza A virus infections;

[(k)] [(9)] Plague;

[(l)] [(10)] Poliomyelitis;

[(m)] [(11)] Rabies, animal;

[(n)] [(12)] Rabies, human;

[(o)] [(13)] Rubella;

[(p)] [(14)] Severe Acute Respiratory Syndrome-associated

Coronavirus (SARS-CoV) disease;

[(q)] Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19);

[(r)] [(15)] Smallpox;

[(s)] [(16)] Tularemia;

[(t)] [(17)] Varicella;

[(18)] Viral hemorrhagic fevers due to:

1. [(a)] Crimean-Congo Hemorrhagic Fever virus;

2. [(b)] Ebola virus;

3. [(c)] Lassa virus;

4. [(d)] Lujo virus;

5. [(e)] Marburg virus; or

6. [(f)] New world arenaviruses including:

a. [(1)] Guanarito virus;

b. [(2)] Junin virus;

c. [(3)] Machupo virus; and

d. [(4)] Sabia virus; and

[(u)] [(19)] Yellow fever.

[(2)] To track the spread of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), the virus that causes COVID-19, notification of testing results shall include both positive and negative test results.

Section 7 [(6)]. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Priority Notification. Notification of the following diseases or conditions shall be considered priority and shall be made within one (1) business day:

(1) Arboviral diseases, neuroinvasive and non-neuroinvasive, including:

(a) California serogroup virus diseases, including diseases caused by:

1. California encephalitis virus;

2. Jamestown Canyon virus;

3. Keystone virus;

4. La Crosse virus;

5. Snowshoe hare virus; and

6. Trivittatus viruses;

(b) Chikungunya virus disease;

(c) Eastern equine encephalitis virus disease;

(d) Powassan virus disease;

(e) St. Louis encephalitis virus disease;

(f) Venezuelan equine encephalitis disease;

(g) West Nile virus disease;

(h) Western equine encephalitis virus disease; and

(i) Zika virus disease or infection or the birth of a child to a mother who was Zika-positive or Zika-inconclusive during any stage of pregnancy or during the periconceptional period;

(2) Brucellosis (cases not temporally or spatially clustered);

(3) Campylobacteriosis;

(4) Carbon monoxide poisoning;

(5) Cholera;

(6) Cryptosporidiosis;

(7) Cyclosporiasis;

(8) Dengue virus infections;

[(9)] [(8)] Escherichia coli O157:H7;

[(10)] [(9)] Foodborne disease outbreak;

[(11)] Giardiasis;

[(12)] [(10)] Haemophilus influenzae invasive disease;

[(13)] [(11)] Hansen's disease (leprosy);

[(14)] [(12)] Hantavirus infection, non-Hantavirus pulmonary syndrome;

[(15)] [(13)] Hantavirus pulmonary syndrome (HPS);

[(16)] [(14)] Hemolytic uremic syndrome (HUS), post-diarrheal;

[(17)] [(15)] Hepatitis B, acute;

[(18)] [(16)] Hepatitis B infection in a pregnant woman;

[(19)] [(17)] Hepatitis B infection in an infant or a child aged five (5) years or less;

[(20)] [(18)] Newborns born to Hepatitis B positive mothers at the time of delivery;

[(21)] [(19)] Influenza-associated mortality;

[(22)] Legionellosis;

[(23)] [(20)] Leptospirosis;

[(24)] [(21)] Listeriosis;

[(25)] [(22)] Mumps;

[(26)] [(23)] Norovirus outbreak;

[(27)] [(24)] Pertussis;

[(28)] [(25)] Pesticide-related illness, acute;

[(29)] [(26)] Psittacosis;

[(30)] [(27)] Q fever;

[(31)] [(28)] Rubella, congenital syndrome;

[(32)] [(29)] Salmonellosis;

[(33)] [(30)] Shiga toxin-producing E. coli (STEC);

[(34)] [(31)] Shigellosis;

[(35)] [(32)] Streptococcal toxic-shock syndrome;

[(36)] [(33)] Streptococcus pneumoniae, invasive disease;

[(37)] [(34)] Tetanus;

[(38)] [(35)] Toxic-shock syndrome (other than Streptococcal);

[(39)] [(36)] Tuberculosis;

[(40)] [(37)] Typhoid fever;

[(41)] [(38)] Vibriosis; and

[(42)] [(39)] Waterborne disease outbreak.

Section 8 [(7)]. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Routine Notification. Notification of the following diseases shall be considered routine and shall be made within five (5) business days:

(1) Acute Flaccid Myelitis;

(2) Anaplasmosis;

(3) Babesiosis;

[(4)] [(2)] Coccidioidomycosis;

[(5)] [(3)] Creutzfeldt-Jakob disease;

[(6)] [(4)] Ehrlichiosis/[Anaplasmosis];

[(7)] [(5)] Hepatitis C, acute;

[(8)] [(6)] Hepatitis C infection in a pregnant woman;

[(9)] [(7)] Hepatitis C infection in an infant or a child aged five (5) years or less;

[(10)] [(8)] Newborns born to Hepatitis C positive mothers at the time of delivery;

[(11)] [(9)] Histoplasmosis;

[(12)] Laboratory-confirmed influenza;

[(13)] [(10)] Lead poisoning;

[(14)] [(11)] Legionellosis;

[(15)] [(12)] Lyme Disease;

[(16)] [(13)] Malaria;

[(17)] [(14)] Spotted Fever Rickettsiosis (Rocky Mountain Spotted Fever);

[(18)] [(15)] Toxoplasmosis; and

~~(18)~~[(46)] Trichinellosis (Trichinosis).

Section ~~9~~[8]. Notifiable Infectious Conditions Requiring Routine Notification by Electronic Laboratory Reporting. (1) ~~[Beginning October 1, 2016,]~~ Notification of the following ~~[diseases]~~ shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:

- (a) ~~[Cyclosporiasis;~~
- (b) ~~Giardiasis;~~
- (c) ~~Hepatitis B laboratory test results, which shall:~~
 1. ~~Be [whether] reported as positive or negative; and~~
 2. ~~;~~

~~1.] Include the serum bilirubin levels or serum alanine aminotransferase taken within ten (10) days of the test of a patient who has tested positive; and~~

- (b) ~~or~~
- 2. ~~Include the serum alanine aminotransferase levels taken within ten (10) days of the test of a patient who tested positive;~~
- (d) ~~Hepatitis C laboratory test results, which shall:~~
 1. ~~Be [whether] reported as positive or negative; and~~
 2. ~~;~~

~~1.] Include the serum bilirubin levels or serum alanine aminotransferase taken within ten (10) days of the test of a patient who has tested positive; or~~

~~2. Include the serum alanine aminotransferase levels taken within ten (10) days of the test of a patient who tested positive; and~~

- (e) ~~Varicella laboratory test results reported as positive for:~~
 1. ~~Isolation of varicella virus from a clinical specimen;~~
 2. ~~Varicella antigen detected by direct fluorescent antibody test;~~
 3. ~~Varicella-specific nucleic acid detected by polymerase chain reaction (PCR); or~~
 4. ~~A significant rise in serum anti-varicella immunoglobulin G (IgG) antibody level by a standard serologic assay].~~

~~(2) Reports made pursuant to this section shall include a diagnosis.~~

Section ~~10~~[9]. Multi-Drug Resistant Organisms and Other Organisms Requiring Routine Notification by Electronic Laboratory Reporting. (1) ~~[Beginning October 1, 2016,]~~ Notification of the following diseases shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:

(a) Clostridioides (formerly Clostridium) difficile (C. difficile) identified from a positive laboratory test result for C. difficile toxin A or B (includes molecular assays {PCR} or toxin assays) or a toxin-producing organism detected by culture or other laboratory means performed on a stool sample;

(b) Enterobacteriaceae species resistant to ceftazidime, ceftriaxone, or cefotaxime [Vancomycin-intermediate Staphylococcus aureus (VISA), which includes S. aureus cultured from any specimen that the results show a minimum inhibitory concentration (MIC) of 4-8 µg/mL per standard laboratory methods;

(b) Vancomycin-resistant Staphylococcus aureus (VRSA), which includes S. aureus cultured from any specimen that the results show a minimum inhibitory concentration (MIC) of greater than or equal to 16 µg/mL per standard laboratory methods];

(c) Methicillin-resistant Staphylococcus aureus (MRSA), which includes S. aureus cultured from any specimen that tests oxacillin-resistant, ceftoxitin-resistant, or methicillin-resistant by standard susceptibility testing methods, or by a laboratory test that is FDA-approved for MRSA detection from isolated colonies. These methods may also include a positive result by any FDA-approved test for MRSA detection; and

(d) Vancomycin-resistant Enterococcus species (VRE), only those identified to the species level, that are resistant to Vancomycin by standard susceptibility testing methods or by results from any FDA-approved test for VRE detection from

specific specimen sources];

(e) Clostridium difficile (C. difficile) identified from a positive laboratory test result for a C. difficile toxin A or B (includes molecular assays {PCR} or toxin assays) or a toxin-producing organism detected by culture or other laboratory means performed on a stool sample;

(f) Carbapenem-resistant Enterobacteriaceae (CRE), which includes Escherichia coli, Klebsiella oxytoca, Klebsiella pneumonia, or Enterobacter species testing resistant to imipenem, meropenem, doripenem, or ertapenem by standard susceptibility testing methods or by production of carbapenemase by an isolate demonstrated by using a recognized test;

(g) Cephalosporin-resistant Klebsiella, which includes Klebsiella oxytoca, Klebsiella pneumonia, or a Klebsiella species testing nonsusceptible (resistant or intermediate) to ceftazidime, cefotaxime, ceftriaxone, or cefepime;

(h) Extended-spectrum beta-lactamase Gram-negative organisms (ESBL) Enterobacteriaceae species nonsusceptible (resistant or intermediate) to ceftazidime, cefepime, ceftriaxone, or cefotaxime;

(i) Multidrug-resistant Acinetobacter – Nonsusceptibility (resistant or intermediate) to at least one (1) agent in at least three (3) antimicrobial classes of the following six (6) classes: 1. Ampicillin-sulbactam;

2. Cephalosporins (cefepime, ceftazidime);

3. β-lactam-β-lactamase inhibitor combination (piperacillin, piperacillin-tazobactam);

4. Carbapenems (imipenem, meropenem, doripenem);

5. Fluoroquinolones (ciprofloxacin or levofloxacin); and

6. Aminoglycosides (gentamicin, tobramycin, or amikacin);

and

(j) Multidrug-resistant Pseudomonas – Nonsusceptibility, resistant or intermediate, to at least one (1) agent in at least three (3) antimicrobial classes of the following five (5) classes:

1. Cephalosporins (cefepime, ceftazidime);

2. β-lactam-β-lactam-β-lactamase inhibitor combination (piperacillin, piperacillin-tazobactam);

3. Carbapenems (imipenem, meropenem, doripenem);

4. Fluoroquinolones (ciprofloxacin or levofloxacin); and

5. Aminoglycosides (gentamicin, tobramycin, or amikacin)].

(2) The report of an organism under this section shall include the following:

(a) Date of specimen collection;

(b) Source of specimen;

(c) Susceptibility pattern; and

(d) Name of the ordering health professional.

(3) Upon a test result performed by a medical laboratory ~~that~~[which] indicates infection with an agent associated with one (1) or more of the diseases or conditions or a multi-drug resistant organism specified in this section, the director of the medical laboratory shall electronically report the result to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) days.

(4) The report shall include a diagnosis.

Section 11. Multi-Drug Resistant Organisms and Other Organisms Requiring Priority Reporting by EPID 250 and by electronic laboratory reporting to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within one (1) business day. Notification of the following diseases shall be considered priority:

(1) Candida auris - Laboratory Criteria for Diagnosis shall include:

(a) Confirmatory laboratory evidence for detection of Candida auris from any body site using either culture or a culture independent diagnostic test (e.g., Polymerase Chain Reaction {PCR}); or

(b) Presumptive laboratory evidence for detection of Candida haemulonii from any body site using a yeast identification method that is not able to detect Candida auris, and either the isolate or specimen is not available for further testing, or the isolate or specimen has not yet undergone further testing;

(2) Carbapenem-resistant – Acinetobacter – Any Acinetobacter species testing resistant to imipenem, meropenem,

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or doripenem, with MIC value greater than or equal to 8 µg/mL by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(3) Carbapenem-resistant Enterobacteriaceae (CRE). Any Enterobacteriaceae species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to 4 µg/mL, or ertapenem with MIC value greater than or equal to 2 µg/mL, by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(4) Carbapenem-resistant – Pseudomonas – Any Pseudomonas species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to 8 µg/mL by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(5) Vancomycin-intermediate Staphylococcus aureus (VISA), which includes S. aureus cultured from any specimen having a minimum inhibitory concentration (MIC) of 4-8 µg/mL for vancomycin per standard laboratory methods; and

(6) Vancomycin-resistant Staphylococcus aureus (VRSA), which includes S. aureus cultured from any specimen having a minimum inhibitory concentration (MIC) of greater than or equal to 16 µg/mL for vancomycin per standard laboratory methods.

Section 12[10]. Newly Recognized Infectious Agents, HAI Outbreaks, Emerging Pathogens, and Pathogens of Public Health Importance. (1) The following shall be reported immediately by telephone to the Kentucky Department for Public Health:

(a) A suspected incidence of bioterrorism caused by a biological agent;

(b) Submission of a specimen to the Kentucky Division of Laboratory Services for select agent identification or select agent confirmation testing; or

(c) An outbreak of a disease or condition that resulted in multiple hospitalizations or death.

(2) An unexpected pattern of cases, suspected cases, or deaths that[which] may indicate the following shall be reported immediately by telephone to the local health department in the county where the health professional is practicing or where the facility is located:

(a) A newly-recognized infectious agent;

(b) An outbreak;

(c) An emerging pathogen that[which] may pose a danger to the health of the public;

(d) An epidemic; or

(e) A noninfectious chemical, biological, or radiological agent.

(3) A report of the following shall be considered priority and shall be reported to the local health department in the county where the health professional is practicing or where the facility is located within one (1) business day:

(a) Suspected Staphylococcal or other foodborne intoxication; or

(b) Salmonellosis or other foodborne or waterborne infection.

(4) The local health department shall:

(a) Investigate the outbreak or occurrence;

(b) Carry out public health protection measures to address the disease or condition involved; and

(c) Make medical and environmental recommendations to prevent future similar outbreaks or occurrences.

(5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 13[14]. Laboratory Surveillance. (1) Medical or national reference laboratory results for the following shall be considered routine:

(a) Influenza virus isolates;

(b) PCR-positive test results for influenza virus; and

(c) DNA molecular assays for influenza virus.

(2) The report shall include specific laboratory information pertinent to the result.

(3) Upon request by the Kentucky Department for Public Health, a health facility laboratory or a medical laboratory shall report the number of clinical isolates and information regarding the antimicrobial resistance patterns of the clinical isolates at intervals no less frequently than three (3) months for the following:

(a) Acinetobacter baumannii complex;

(b) Enterobacter cloacae complex;

(c) Enterococcus species;

(d) Escherichia coli;

(e) Klebsiella oxytoca;

(f) Klebsiella pneumoniae;

(g) Pseudomonas aeruginosa;

(h) Staphylococcus aureus;[

(b) Enterococcus species;] or

(i)[(e)] An organism specified in a request that includes a justification of its public health importance.

(4) A facility that reports antimicrobial resistance (AR) data to the National Healthcare Safety Network (NHSN) AUR (Antimicrobial Use & Resistance) module shall meet this reporting requirement through NHSN reporting.

Section 14[12]. Healthcare-Associated Infection Surveillance.

(1) A healthcare facility in Kentucky that participates in CMS reporting programs shall authorize the CDC to allow the Kentucky Department for Public Health to access health care-associated infection data reported to NHSN.

(2) The Kentucky Department for Public Health shall preserve patient confidentiality and shall not disclose to the public any patient-level data obtained from any health care facility.

(3) The Kentucky Department for Public Health may issue reports to the public regarding healthcare-associated infections in aggregate data form that[which]:

(a) May identify individual health care facilities; and

(b) Shall comply with methodology developed by the CDC and CMS for national reporting of health care-associated infections.

(4) The Kentucky Department for Public Health may evaluate healthcare-associated infection data for accuracy and completeness.

Section 15. Antimicrobial Use Reporting. (1) A short-term acute-care hospital in Kentucky that participates in the Centers for Medicare and Medicaid Services (CMS) reporting programs shall report data on facility-wide inpatient antimicrobial use to the Kentucky Department for Public Health, Healthcare-Associated Infection/Antibiotic Resistance (HAI/AR) Prevention Program, on a quarterly basis, effective January 1, 2021. Critical access hospitals shall be exempt.

(2) Reporting deadlines shall be consistent with the CMS reporting program submission deadlines of data to the NHSN.

(3) The HAI/AR Prevention Program shall provide the specifications for data submission.

(4) Hospitals shall include aggregated antimicrobial use and patient day data for all inpatient units (i.e., facility-wide inpatient) included in the NHSN Laboratory-identified (LabID) MRSA Bacteremia reporting.

(5) The antimicrobial use numerator shall be days of therapy (DOTs) as defined by the NHSN Antimicrobial Use and Resistance (AUR) Module, available at [//www.cdc.gov/nhsn/pdfs/pscmanual/11pscaurcurrent.pdf](http://www.cdc.gov/nhsn/pdfs/pscmanual/11pscaurcurrent.pdf).

(6) Total DOTs shall be submitted for each of the following antimicrobials:

(a) Azithromycin;

(b) Cefepime;

(c) Ceftazidime;

(d) Ceftriaxone;

(e) Ciprofloxacin;

(f) Clindamycin;

(g) Daptomycin;

(h) Ertapenem;

(i) Imipenem;

(j) Levofloxacin;

(k) Linezolid;

(l) Meropenem;

(m) Moxifloxacin;

(n) Piperacillin-tazobactam; and

(o) Vancomycin.

(7) Total DOTs for the listed drugs shall include only administrations via the intravenous and digestive tract routes.

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(8) The denominator for antimicrobial use reporting shall be patient days as defined by the NHSN LabID Module available at https://www.cdc.gov/nhsn/pdfs/pscmanual/12pscmdro_cdadcurrnt.pdf.

(9) A hospital that reports antimicrobial use data to the NHSN AUR Module shall meet this reporting requirement through NHSN reporting.

Section 16[13]. Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) Surveillance. (1) All case reports shall be submitted to the HIV/AIDS Surveillance Program of the Kentucky Department for Public Health, Division of Epidemiology and Health Planning, or its designee. [A report of an HIV infection or AIDS diagnosis shall be considered routine and shall be reported] within five (5) business days of diagnosis on one (1) of the following forms:

- (a) Adult HIV/[AIDS] Confidential Case Report Form; or
- (b) Pediatric HIV/[AIDS] Confidential Case Report Form.
- (2) Health professionals and medical laboratories shall report:
- (a) A positive test result for HIV infection including a result from:

- 1. 3rd generation immunoassay;
- 2. 4th generation immunoassay;
- 3. Western Blot;
- 4. PCR;
- 5. HIV-1 or HIV-2 differentiating such as Multispot;
- 6. HIV antigen;
- 7. HIV antibody;
- 8. CD4+ assay including absolute CD4+ cell counts and CD4+%;
- 9. HIV Viral Load Assay including detectable and undetectable values;[or]
- 10. HIV genetic sequencing; or
- 11. A positive confirmatory serologic test result for HIV infection; or

(b) A diagnosis of AIDS that meets the definition of AIDS established within the CDC guidelines.

(3) The most recent negative HIV test, if available, shall be submitted with the report required by paragraph (a) or (b) of this subsection.

(4) Any request for data related to HIV infection or AIDS shall be made to the Department for Public Health, Division of Epidemiology and Health Planning [A case report for a resident of Jefferson, Henry, Oldham, Bullitt, Shelby, Spencer, or Trimble County shall be submitted to the HIV/AIDS Surveillance Program of the Louisville Metro Health Department.

(4) A case report for a resident of the remaining Kentucky counties shall be submitted to the HIV/AIDS Surveillance Program of the Kentucky Department for Public Health, Division of Epidemiology and Health Planning].

(5) A case report for a person with an HIV infection without a diagnosis of AIDS, or HIV infection with a diagnosis of AIDS shall include the following information:

- (a) The patient's full name;
- (b) The patient's complete address;
- (c) Date of birth using the format MMDDYYYY;
- (d) Gender;
- (e) Race;
- (f) Ethnicity;
- (g) Risk factor as identified by CDC;
- (h) County of residence;
- (i) Name of provider and facility submitting report including contact information;
- (j) Specimen collected;
- (k) Date and type of HIV test performed using the format MMDDYYYY;
- (l) Results of CD4+ cell counts and CD4+%;
- (m) Results of viral load testing;
- (n) Results of PCR, HIV culture, HIV antigen, and HIV antibody, if performed;
- (o) Results of TB testing, if available;[and]
- (p) Any documented HIV negative test, if available;
- (q) History of PrEP or PEP treatment, if available;
- (r) Antiretroviral treatment, if available;

(s) HIV status of the person's partner, spouse, or children, as applicable;

(t) [-

(6) A reports of an AIDS case shall include:

(a) Information in subsections (2) through (5) of this section;

(b) Opportunistic infections diagnosed; and

(u)[(e)] Date of onset of illness.

(6)[(7)] A report of AIDS shall be made whether or not the patient has been previously reported as having an HIV infection.

(7)[(8)] If the patient has not been previously reported as having an HIV infection, the AIDS report shall also serve as the report of HIV infection [as required by subsection (2) through (5) of this section].

Section 17[14]. Sexually Transmitted Disease (STD). (1) Notification of a probable diagnosis of an STD as specified in subsection (4) or (7) of this section shall be made.

(2) The report shall provide the following information:

(a) Pregnancy status; and

(b) Clinical, epidemiologic, laboratory, and treatment information pertinent to the disease.

(3) Upon a laboratory test result that[which] indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in subsection (4) or[and] (7) of this section, a medical laboratory shall report to the Kentucky Department for Public Health information required by Section 5(6)(b)[4(16)] of this administrative regulation.

(4) Sexually Transmitted Diseases Requiring Priority Notification. A report of the following shall be considered priority and shall be made within one (1) business day:

(a) Each pregnant female who has tested positive for syphilis regardless of stage[Congenital syphilis]; or

(b) Syphilis - primary, secondary, or early latent.

(5) Upon receipt of a report for a disease or condition specified in subsection (4) of this section, a local health department shall:

(a) Investigate the report;

(b) Carry out public health protection measures to address the disease or condition; and

(c) Forward the report to the Kentucky Department for Public Health within one (1) business day.

(6) The local health department may seek assistance from the Kentucky Department for Public Health.

(7) Sexually Transmitted Diseases Requiring Routine Notification. A report of the following shall be considered routine and shall be made within five (5) business days:

(a) Chancroid;

(b) Chlamydia trachomatis infection;

(c) Gonorrhea;

(d) Granuloma inguinale;

(e) Lymphogranuloma venereum; or

(f) Syphilis, other than primary, secondary, early latent, or congenital.

(8) Upon receipt of a report for a disease or condition specified in subsection (7) of this section, a local health department shall:

(a) Make a record of the report using Form EPID 200, Kentucky Reportable Disease Form;

(b) Forward the report to the Kentucky Department for Public Health within five (5) business days; and

(c) Render assistance if requested by the reporting entity or the Kentucky Department for Public Health.

Section 18[15]. Tuberculosis. (1) A pharmacist shall give notice if two (2) or more of the following medications used for the initial treatment of active tuberculosis are dispensed to an inpatient in a health facility or to an ambulatory patient in a health facility or a pharmacy:

(a) Ethambutol;

(b) Isoniazid;

(c) Pyrazinamide; and

(d) Rifampin or rifabutin[;

(b) Isoniazid;

(c) Pyrazinamide; and

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~~(d) Ethambutol.~~

(2)(a) A report of tuberculosis shall be considered priority and shall be reported to the local health department serving the county in which the patient resides.

~~(b)(3)~~ If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

~~(3)(4)~~ The report shall include:

(a) Information required in Section ~~5(6)(b)(4)(46)~~ of this administrative regulation; and

(b) Names of the medications dispensed.

Section ~~19(16)~~. Asbestosis, Coal Worker's Pneumoconiosis, and Silicosis. (1) A health professional shall report a diagnosis of the following to the Kentucky Department for Public Health within three (3) months of diagnosis:

- (a) Asbestosis;
- (b) Coal worker's pneumoconiosis; or
- (c) Silicosis.

(2) A report required under this section shall include the information required in Section ~~5(6)(b)~~ ~~following information regarding the patient:~~

- ~~(a) Name;~~
- ~~(b) Address;~~
- ~~(c) Date of birth; and~~
- ~~(d) County of residence.~~

Section ~~20(17)~~. Reporting of Communicable Diseases in Animals. (1) A diagnosis in an animal of a condition known to be communicable to humans, except for rabies, shall require routine notification.

(2) A veterinarian shall report the diagnosis within five (5) business days to the local health department serving the county in which the animal is located.

(3) If a laboratory test indicates infection of an animal with an agent associated with a condition known to be communicable to humans, the director of a medical laboratory shall report the result to the local health department serving the county in which the animal is located within five (5) business days.

(4) The local health department receiving the report shall:

- (a) Investigate the report;
- (b) Carry out public health protection measures for the control of communicable diseases; and
- (c) Forward the report to the Kentucky Department for Public Health within five (5) business days.

(5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section ~~21(18)~~. Kentucky ~~[Department for]~~ Public Health Advisory. (1) If the Secretary of the Cabinet for Health and Family Services or the Commissioner of the Department for Public Health determines that a disease not presently listed in this administrative regulation requires reporting, the secretary or commissioner may issue a Kentucky Public Health Advisory.

(2) The Kentucky Public Health Advisory shall include:

- (a) Date and time the advisory is issued;
- (b) A unique number to identify the advisory;
- (c) Names for the disease or condition;
- (d) A description of the disease or condition;
- (e) Recommendations for health professionals, health facilities, and laboratories; and
- (f) Notification requirements including:
 1. The notification time interval;
 2. Methods for notification; and
 3. Forms to be completed and submitted with the notification.

(3) The duty to report by health professionals, health facilities, and laboratories pursuant to a Kentucky Public Health Advisory shall begin upon receipt of the advisory and shall remain in effect until the advisory is rescinded by order of the secretary or the commissioner.

Section ~~22~~. Penalty. If the cabinet has cause to believe that a physician willfully neglects or refuses to notify the cabinet in accordance with this administrative regulation, pursuant to KRS

214.990(1) the cabinet shall make a referral to the appropriate professional licensing board.

Section ~~23(19)~~. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) ~~[Form]~~ "EPID 200, Kentucky Reportable Disease Form", ~~4/2020(6/2016)~~;
- (b) ~~[Form]~~ "EPID 250, Kentucky Reportable MDRO Form", ~~4/2020(6/2014)~~;
- (c) ~~[Form]~~ "EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (aged five years or less)", ~~4/2020(9/2016)~~;
- (d) ~~[Form]~~ "EPID 399, Perinatal Hepatitis B Prevention Form for Infants", ~~6/2020(4/2012)~~;
- (e) ~~[Form]~~ "Adult HIV Confidential Case Report Form", ~~11/2019(3/2013)~~; and
- (f) ~~[Form]~~ "Pediatric HIV Confidential Case Report Form", ~~11/2019(3/2013)~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 12, 2020

FILED WITH LRC: June 15, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 24, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases, and to permit an accurate assessment of the health status of the Commonwealth.

(b) The necessity of this administrative regulation: KRS 211.180(1) requires the cabinet to implement and maintain a statewide program for the detection, prevention, and control of reportable diseases. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation delineates which diseases are reportable including the urgency of the notification.

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(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow clinicians including every physician, advanced practice registered nurse, and head of family to notify the local health department of the existence of the diseases specified in the administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the list of reportable diseases, which includes Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19) and Multi-system Inflammatory Syndrome in Children (MSI-C), adds the provisions for submitting specimens for the identification of *M. tuberculosis*, updates the reporting requirements for multi-drug resistant organisms, adds the provisions for antimicrobial use reporting, updates the reporting requirements for HIV infection, adds reference to penalties for non-reporting, and updates the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to accurately capture pertinent information regarding *M. tuberculosis*; to maintain current reporting requirements based on the evolution of multi-drug resistant organisms; to collect data on facility-wide inpatient antimicrobial use as part of the Healthcare-Associated Infection/Antibiotic Resistance (HAI/AR) Prevention Program consistent with the CMS reporting program; to maintain a current surveillance system regarding HIV and AIDS including genetic sequencing, documentation of HIV negative tests, history of PrEP treatment, and antiretroviral treatment; to promote compliance in the reporting of communicable diseases; and to provide updated material to be incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.090(3) authorizes the secretary to adopt rules and regulations necessary to regulate and control all matters set forth in KRS 211.180. KRS 211.180(1) authorizes the cabinet to enforce the administrative regulations promulgated by the secretary of the Cabinet for Health and Family Services including policies, plans, and comprehensive programs relating to the detection, prevention, and control of communicable diseases. This amendment provides necessary updates needed to remain current in the accurate reporting of diseases.

(d) How the amendment will assist in the effective administration of the statutes: By updating this administrative regulation to reflect the current nature of multi-drug resistant organisms, the antimicrobial use surveillance, the provisions needed for accurate data collection regarding *M. tuberculosis* and HIV/AIDS, the list of reportable diseases, and the reference to penalties for non-reporting, the amendment allows for up-to-date compliance between the statutes and the administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected by this administrative regulation include all health facilities as defined by KRS 216B.015(13), health professionals licensed under KRS Chapters 311 through 314, medical laboratories as defined by KRS 333.020(3), national reference laboratories contracted by Kentucky health professionals, laboratories, or healthcare facilities, pharmacists licensed under KRS Chapter 315, and veterinarians licensed under KRS Chapter 321. In addition, all citizens of the Commonwealth will be affected as a result of this amendment.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The regulated entities in question (3) will need to be aware of the updated lists of diseases and conditions requiring reporting including infectious agents and multi-drug resistant organisms. They will need to be aware of the specimens and isolates requiring submission to the Division of Laboratory Services. They also need to be aware of updated requirements

regarding laboratory testing and submission of *M. tuberculosis*. Furthermore, entities need to be aware of immediate, urgent, priority, routine, and general reporting methods.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs associated with compliance is unknown. Healthcare facilities and physicians already report communicable diseases.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the benefits of the timely and appropriate prevention and control of communicable diseases will be afforded to all citizens of the Commonwealth.

(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 costs.

(b) On a continuing basis: There is no increase in ongoing costs associated with the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The reportable disease programs affected by this administrative regulation are funded through a mix of state general fund dollars, federal dollars, and specialized grants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees or funding is not necessary to implement the changes with this amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not contain fees.

(9) TIERING: Is tiering applied? Tiering is not applied. While the list of reportable diseases and conditions is separated by immediate, urgent, priority, routine, or general notification, all healthcare facilities and physicians are required to report any known communicable disease.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division of Epidemiology and Health Planning, as well as all local health departments.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.090(3), 211.180(1), and 214.010

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? There are no increased costs to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no increased costs to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Laboratory Services
(Amendment)

902 KAR 4:030. Newborn screening program.

RELATES TO: KRS 194A.050, 211.090, 211.180(1), 214.155
 STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 214.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.155 requires the Cabinet for Health and Family Services to operate a newborn screening program for inborn errors of metabolism and other inherited and congenital disorders and conditions, and to establish a schedule of fees to cover the actual costs to the cabinet for the program. This administrative regulation requires that infants be tested for inborn errors of metabolism and other inherited and congenital disorders and conditions as specified in KRS 214.155, and establishes the schedule of fees to cover actual costs of the newborn screening program. The selection of screened conditions is based upon the recommended uniform screening panel as authored by the American College of Medical Genetics and commissioned by the Health Resources and Services Administration, U.S. Department of Health and Human Services.

Section 1. Definitions. (1) "Blood spot testing" means laboratory testing that is performed on newborn infants to detect a wide variety of inherited and congenital disorders and conditions by using a laboratory-authorized filter paper specimen card.

(2) "Critical congenital heart disease" or "CCHD" means an abnormality in the structure or function of the heart that exists at birth and places an infant at significant risk of disability or death if not diagnosed and treated soon after birth.

(3) "Diagnostic echocardiogram" means a test that uses ultrasound to provide an image of the heart that is performed by a technician trained to perform pediatric echocardiograms.

(4) "Laboratory" means the Division of Laboratory Services within the Cabinet for Health and Family Services, Department for Public Health.

(5) "Pediatric cardiologist" means a pediatrician that is board-certified to provide pediatric cardiology care.

(6) "Program" means the Newborn Screening Program for inherited and congenital disorders and conditions operated by the Cabinet for Health and Family Services, Department for Public Health.

(7) "Pulse oximetry testing" means a noninvasive test that estimates the percentage of hemoglobin in blood that is saturated with oxygen.

(8) "Submitter" means a hospital, primary care provider, health department, birthing center, laboratory, or midwife submitting an infant's blood specimen for the purpose of newborn screening.

Section 2. Tests for inborn errors of metabolism or other inherited or congenital disorders and conditions for newborn infants as part of newborn screening shall be consistent with the U.S. Department of Health and Human Services' Recommended Uniform Screening Panel and include the following:

- (1) 2-Methyl-3-hydroxybutyric aciduria (2M3HBA);
- (2) 2-Methylbutyryl-CoA dehydrogenase deficiency (2MBDH);
- (3) 3-Methylcrotonyl-CoA carboxylase deficiency (3MCC);
- (4) 3-Methylglutaconic aciduria (3MGA);
- (5) 3-Hydroxy 3-Methylglutaric aciduria (HMG);
- (6) Argininemia (ARG);
- (7) Argininosuccinic acidemia (ASA);
- (8) Beta-ketothiolase deficiency (BKT);
- (9) Biotinidase disorder (BIOT);
- (10) Carnitine acylcarnitine translocase deficiency (CACT);
- (11) Carnitine ~~palmitoyltransferase~~[~~palmitoyl—transferase~~] deficiency I (CPT-I);
- (12) Carnitine ~~palmitoyltransferase~~[~~palmitoyl—transferase~~] deficiency II (CPT-II);
- (13) Carnitine uptake defect (CUD);

- (14) Citrullinemia type I (CIT-I);
- (15) Citrullinemia type II (CIT-II);
- (16) Congenital adrenal hyperplasia (CAH);
- (17) Congenital hypothyroidism (CH);
- (18) Critical congenital heart disease (CCHD);
- (19) Cystic fibrosis (CF);
- (20) Ethylmalonic encephalopathy (EE);
- (21) Galactosemia (GAL);
- (22) Glutaric acidemia type I (GA I);
- (23) Glutaric acidemia type II (GA-II);
- (24) Glycogen storage disease type II (GSD-II, Pompe Disease);
- (25) Homocystinuria (HCY);
- (26) Hypermethioninemia (MET);
- (27) Hyperphenylalaninemia (H-PHE);
- (28) Isobutyryl-CoA dehydrogenase deficiency (IBG);
- (29) Isovaleric acidemia (IVA);
- (30) Long-chain ~~hydroxyacyl~~[~~Hydroxy—acyl~~]—CoA dehydrogenase deficiency (LCHAD);
- (31) Malonic acidemia (MAL);
- (32) Maple syrup urine disease (MSUD);
- (33) Medium-chain acyl-CoA dehydrogenase deficiency (MCAD);
- (34) Methylmalonic acidemia (Cbl A,B);
- (35) Methylmalonic acidemia (Cbl C,D);
- (36) Methylmalonic acidemia mutase deficiency (MUT);
- (37) Mucopolysaccharidosis type I (MPS-I, Hurler's Disease);
- (38) Multiple carboxylase deficiency (MCD);
- (39) Non-ketotic Hyperglycinemia (NKHG);
- (40) Phenylketonuria (PKU);
- (41) Propionic acidemia (PA);
- (42) Severe combined immunodeficiency (SCID);
- (43) Short-chain acyl-CoA dehydrogenase deficiency (SCAD);
- (44) Sickle cell disease (Hb S/S);
- (45) Sickle cell hemoglobin C disease (Hb S/C);
- (46) Sickle cell S Beta Thalassemia (Hb S/Th);
- (47) Spinal muscular atrophy (SMA);
- (48) Trifunctional protein deficiency (TFP);
- (49) Tyrosinemia type I (TYR-I);
- (50) Tyrosinemia type II (TYR-II);
- (51) Tyrosinemia type III (TYR-III);
- (52) Various Hemoglobinopathies (includes Hb E);
- (53) Very long-chain acyl-CoA deficiency (VLCAD); and
- (54) X-linked adrenoleukodystrophy (X-ALD).

Section 3. Tests for inborn errors of metabolism or other inherited or congenital disorders and conditions for newborn infants as part of newborn screening shall include the following disorder that is not recommended by the U.S. Department of Health and Human Services, but is required by Kentucky law: Krabbe Disease (KD).

Section 4. Submitter Responsibilities. (1) Except as provided in KRS 214.155(3) and (5), the administrative officer or other person in charge of the hospital or institution caring for newborn infants and the attending primary care provider or midwife shall administer to, or verify administration of tests to, every infant in its care prior to hospital discharge:

- (a) A blood spot test to detect inborn errors of metabolism and other inherited and congenital disorders and conditions identified in Sections 2 and 3 of this administrative regulation; and
 - (b) Pulse oximetry testing to detect critical congenital heart disease.
- (2) If a baby is not born in a hospital or institution, the attending primary care provider or midwife shall ensure that both tests required by subsection (1) of this section are:
- (a) Administered between twenty-four (24) and forty-eight (48) hours of age;
 - (b) Acted upon if abnormal; and
 - (c) Reported to the program by fax or by the cabinet's web-based system.
- (3) A capillary blood spot specimen shall be obtained from a newborn infant not requiring an extended stay due to illness or prematurity between twenty-four (24) and forty-eight (48) hours of

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age.

(4) If the infant is to remain in the hospital due to illness or prematurity, the hospital shall obtain the capillary blood spot specimen from that infant after twenty-four (24) and before seventy-two (72) hours of age.

(5) Except as provided by subsection (6) of this section, the pulse oximetry testing shall be performed when the infant is twenty-four (24) hours of age or older and shall occur prior to discharge.

(6) If the infant is discharged prior to twenty-four (24) hours of age, the blood spot and pulse oximetry testing shall be performed as close to twenty-four (24) hours of age as possible.

(7) If an infant is transferred from the birth hospital to another hospital during the newborn hospital stay, the requirements established in this subsection shall apply.

(a) The sending hospital shall obtain the capillary blood spot specimen for the newborn screening blood test and the pulse oximetry testing for CCHD if the infant is twenty-four (24) hours of age or more when the infant is transferred to another hospital.

(b) The receiving hospital shall ensure the newborn screening blood spot test and the pulse oximetry testing are performed if the infant is less than twenty-four (24) hours of age when the infant is transferred.

(8) If an infant expires before the newborn screening blood spot test and pulse oximetry test have been performed, the program shall be notified within five (5) calendar days.

(9) If the information on the filter paper specimen card obtained by the submitter and sent to the laboratory is incomplete or inadequate, then the submitter, upon request of the program, shall:

(a) Attempt to locate the infant and obtain a complete and adequate specimen within ten (10) days; and

(b) Report to the program a specimen that is unable to be obtained within ten (10) days.

(10) A submitter that is responsible for the collection of the initial blood spot specimen and pulse oximetry testing for newborn screening shall:

(a) Provide to an infant's parent or guardian educational materials regarding newborn screening and pulse oximetry testing;

(b) Designate a newborn screening coordinator and physician responsible for the coordination of the facility's newborn screening compliance by having a newborn screening protocol;

(c) Notify the program of the name of the individuals designated in paragraph (b) of this subsection each year in January and if the designated individual changes; and

(d) Develop a written protocol for tracking newborn screening compliance, which shall:

1. Be submitted to the program each year in January; and

2. Include, at a minimum:

a. A requirement that the name of the primary care provider that will be attending the infant after birth or discharge or, if known, the primary care provider who will be caring for the infant after discharge, shall be placed on the filter paper specimen card sent with the initial blood spot specimen to the laboratory. If the infant is in the neonatal intensive care unit, the name of the attending neonatologist may be placed on the filter specimen card sent with the initial blood spot specimen to the laboratory;

b. Verification that:

(i) Each infant born at that facility has had a specimen obtained for newborn screening and pulse oximetry testing on or before discharge;

(ii) All information on the specimen card has been thoroughly completed; and

(iii) The specimen has been submitted appropriately;

c. A process to ensure that final results of the pulse oximetry screening are entered into the cabinet's web-based system; and

d. A procedure to assure the hospital or facility that identifies that an infant has not had a specimen obtained for newborn screening and pulse oximetry testing prior to discharge shall:

(i) Notify the program;

(ii) Use every reasonable effort to locate the infant;

(iii) Notify the parent or guardian and the primary care provider immediately; and

(iv) Recommend that the infant present to the hospital or primary care provider immediately for a newborn screening blood spot specimen and pulse oximetry testing.

(11) A hospital or facility shall report each written refusal, in accordance with KRS 214.155(5), to the program within five (5) calendar days.

Section 5. Blood Specimen Collection. (1) A capillary blood spot specimen required by Section 4 of this administrative regulation shall be obtained by a heel stick.

(2) Blood from the heel stick shall be applied directly to the filter paper specimen card.

(3) All circles shall be saturated completely using a drop of blood per circle on a filter paper specimen card.

(4) The specimen collector shall provide, on the filter paper specimen card, information requested by the laboratory.

(5) The capillary blood spot specimen shall be air dried for three (3) hours and then shall be mailed or sent to the laboratory:

(a) Within twenty-four (24) hours of collection of the specimen; or

(b) The next business day in which mail or delivery service is available.

(6) A submitter sending a blood spot specimen via regular mail services shall send the specimen to the following address: Cabinet for Health and Family Services, Department for Public Health, Division of Laboratory Services, 100 Sower Boulevard, Frankfort, Kentucky 40602.

(7) A submitter sending a blood spot specimen via expedited mail services shall ensure the specimen is sent to the following address: Cabinet for Health and Family Services, Department for Public Health, Division of Laboratory Services, 100 Sower Boulevard, Suite 204, Frankfort, Kentucky 40602.

(8) Specimens processed or tracked under the newborn screening program shall be limited to specimens on infants less than six (6) months of age.

Section 6. Unsatisfactory or Inadequate Blood Specimen. (1) If a specimen is unsatisfactory or inadequate to produce a valid result, the laboratory shall notify the submitter and the parent on the filter paper specimen card that the newborn screen needs to be repeated as soon as possible.

(2) If a requested repeat specimen has not been received within ten (10) business days from the date the repeat request was issued, the program shall notify the parent by mail of the need for a repeat screening test.

Section 7. Special Circumstances - Blood Transfusion. If a newborn infant requires a blood transfusion, the requirements for newborn screening established in this section shall apply.

(1) The hospital shall obtain a capillary blood spot specimen for newborn screening prior to the infant being transfused, except in an emergency situation.

(2) If the pre-transfusion blood spot specimen was obtained before twenty-four (24) hours of age, or if it was not obtained due to an emergency situation, then the hospital or primary care provider shall use all reasonable efforts to obtain a repeat capillary blood specimen from the transfused infant and submit it to the laboratory according to the following schedule:

(a) Seventy-two (72) hours after the last blood transfusion, rescreen for inborn errors of metabolism and inherited and congenital disorders and conditions listed in Sections 2 and 3 of this administrative regulation; and

(b) Ninety (90) days after the last blood transfusion, rescreen for any disorder that relies on red blood cell analysis such as hemoglobinopathies, galactosemia, and biotinidase deficiency.

Section 8. Reporting Results of Newborn Screening Blood Tests. (1) Normal Results. Upon receipt of a normal lab result, the laboratory shall mail the result to the primary care provider and the submitter.

(2) Abnormal Results.

(a) The laboratory shall report abnormal, presumptive positive, or equivocal results of tests for inborn errors of metabolism, inherited and congenital disorders and conditions to

the program.

(b) The submitter and primary care provider [~~listed on the filter paper specimen card~~] shall receive a copy of all abnormal, presumptive positive, and equivocal results by mail.

(c) In addition to receiving mailed results, ~~a~~[the] primary care provider shall be notified of an abnormal, presumptive positive, or equivocal result in the manner established in this paragraph.

1. Upon receipt of an abnormal, equivocal, or a presumptive positive lab result, the laboratory shall notify the primary care provider listed on the filter paper specimen card within two (2) business days of the result and the need for follow-up testing.

2. Upon receipt of a presumptive positive lab result, the program shall notify the primary care provider listed on the filter paper specimen card of the result and recommend immediate consultation with a university pediatric specialist.

3. If the program is unable to determine the infant's primary care provider to notify them of an abnormal, presumptive positive, or equivocal result and the need for follow-up, the program shall use every available means to notify the infant's parent.

(d) The Cabinet for Health and Family Services shall share pertinent test results with a state university-based specialty clinic or primary care provider who informs the cabinet they are treating the infant who received the test.

(e) The cabinet may share pertinent test results with the local health department in the infant's county of residence that conducts newborn screening follow-up activities.

(f) A specialty clinic or primary care provider shall report results of diagnostic testing to the program within thirty (30) days or earlier upon request.

(g) If a requested repeat specimen has not been received within ten (10) business days from the date the repeat request was issued, the program shall notify the parent by mail of the need for a repeat screening test.

Section 9. Pulse Oximetry Screening for Critical Congenital Heart Disease. Pulse oximetry screening for critical congenital heart defects required by Section 2 of this administrative regulation shall be consistent with the standard of care according to national recommendations by the American Academy of Pediatrics.

Section 10. Pulse Oximetry Screening Process. (1) Except as provided by KRS 214.155(3) and subsections (2) and (4) of this section, pulse oximetry testing shall be performed when the infant is between twenty-four (24) and forty-eight (48) hours of age and shall occur no later than the day of discharge.

(2) If the infant is discharged prior to twenty-four (24) hours of age, the blood spot and pulse oximetry testing shall be performed as close to twenty-four (24) hours of age as possible.

(3) An infant in a neonatal intensive care unit shall be screened when medically appropriate after twenty-four (24) hours of age but prior to discharge.

(4) An infant who has been identified with critical congenital heart disease prior to birth or prior to twenty-four (24) hours of age shall be exempt from the pulse oximetry screening process.

(5) Pulse oximetry screening shall be performed by placing pediatric pulse oximetry sensors simultaneously on the infant's right hand and either foot to obtain oxygen saturation results.

(6) If using a single pediatric pulse oximetry sensor, pulse oximetry screening shall be performed on the infant's right hand and either foot, one after the other, to obtain oxygen saturation results.

Section 11. Pulse Oximetry Testing Results. (1) A passed result shall not require further action if:

(a) The pulse oximetry reading in both extremities is greater than or equal to ninety-five (95) percent; and

(b) The difference between the readings of both the upper and lower extremity is less than or equal to three (3) percent.

(2)(a) A pending result shall:

1. Occur if:

a. The pulse oximetry reading is between ninety (90) and ninety-four (94) percent; or

b. The difference between the readings of both the upper and lower extremity is greater than three (3) percent; and

2. Be repeated using the pulse oximetry screening in one (1) hour.

(b) If a repeated pulse oximetry screen is also interpreted as pending, it shall be performed again in one (1) hour.

(c) If the pulse oximetry result on the third screen continues to meet the criteria as pending after three (3) screenings have been performed, it shall be considered failed and the procedures established in subsection (3) of this section shall be followed.

(3) A failed result shall:

(a) Occur if:

1. The initial pulse oximetry reading is less than ninety (90) percent in the upper or lower extremity; or

2. The provisions of subsection (2)(c) of this section apply; and

(b) Require the following actions:

1. The primary care provider shall be notified immediately;

2. The infant shall be evaluated for the cause of the low saturation reading; and

3. If CCHD cannot be ruled out as the cause of the low saturation reading, the attending physician or advanced practice registered nurse shall:

a. Order a diagnostic echocardiogram to be performed without delay;

b. Ensure the diagnostic echocardiogram be interpreted as soon as possible; and

c. If the diagnostic echocardiogram results are abnormal, obtain a consultation with a pediatric cardiologist prior to hospital discharge.

Section 12. Reporting Results of Pulse Oximetry Screening.

(1) Final results of the pulse oximetry screening shall be entered into the cabinet's web-based system.

(2) A failed result shall be immediately reported to the program by fax or by the cabinet's web-based system.

Section 13. Newborn Screening Fees. (1) A submitter obtaining and sending a blood spot specimen to the laboratory shall be billed a fee of ~~\$150~~[\$123] for the initial newborn screening test.

(2) A submitter obtaining and sending a repeat blood spot specimen to the laboratory shall not be charged an additional fee.

(3) Fees due the Cabinet for Health and Family Services shall be collected through a monthly billing system.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 4, 2020

FILED WITH LRC: June 4, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on August 24, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires infants be tested for inborn errors of metabolism, other inherited and congenital disorders and conditions as specified in KRS 214.155, and establishes the fee amount to cover the actual costs of the newborn screening program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all newborns are screened for heritable and congenital disorders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 214.155 requires the Cabinet for Health and Family Services to operate a newborn screening program for inborn errors of metabolism and other inherited and congenital disorders and conditions, and to establish a schedule of fees to cover the actual costs to the cabinet for the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the identification of newborns who have inborn errors of metabolism and other inherited and congenital disorders and conditions.

(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 increases the fee amount a submitter obtaining and sending a blood spot specimen to the laboratory is billed for the initial newborn screening test.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to cover the actual costs of the newborn screening program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 214.155 authorizes the secretary to establish and collect fees to support the newborn screening program through administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will help to ensure the continued sustainability of the newborn screening program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately ninety-eight (98) hospitals.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: Hospitals submitting newborn screenings will need to be aware of the increased fee amount.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The fee amount is increasing by twenty-seven (27) dollars for each initial screening.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Birthing hospitals will continue to screen newborns for the listed conditions that will in turn allow supports and services to begin immediately upon notification.

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

(a) Initially: The total costs of the newborn screening program is \$7,691,000.

(b) On a continuing basis: Assuming program operations continue as they are, there is no anticipated increase in costs on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and fees collected from submitters are used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in the fee amount is needed to cover the actual cost of the newborn screening program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The fee is being increased from \$123 to \$150 for all initial screenings submitted to the state laboratory. This twenty-seven (27) dollar increase is necessary to cover the costs of the newborn screening program. The increased fee will generate approximately 1.5 million dollars. There is no fee billed for repeat specimens.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation impacts all affected entities equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division of Maternal and Child Health and the Division of Laboratory Services within the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 211.090(3), and 214.155.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will generate approximately 1.5 million dollars in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will generate approximately 1.5 million dollars in subsequent years.

(c) How much will it cost to administer this program for the first year? The current cost of the newborn screening program is \$7,691,000.

(d) How much will it cost to administer this program for subsequent years? The ongoing costs to administer the newborn screening program is \$7,691,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)**

902 KAR 45:110. Permits and fees for retail food establishments, [food manufacturing plants, food storage warehouses, salvage processors and distributors,] vending machine companies, and restricted food concessions.

RELATES TO: KRS 217.015, 217.025, 217.035, 217.037, 217.085, 217.095, 217.125, 217.155, 217.811

STATUTORY AUTHORITY: KRS 217.125(1), (2), (4), 217.811

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) requires 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 217.125(2) and (4) requires the

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secretary [of the Cabinet for Health and Family Services] to provide by administrative regulation a schedule of reasonable fees to be paid by [food manufacturing plants, food storage warehouses,] retail food establishments[, salvage distributors, salvage processing plants,] and restricted food concessions for permits to operate and for inspection activities carried out by the cabinet. KRS 217.811 requires the cabinet to provide by administrative regulation a schedule of fees for operating a vending machine company[for Health and Family Services]. This administrative regulation establishes the schedule of fees.

Section 1. Fees. (1) ~~[A permit fee shall be required for inspections conducted by the cabinet or the local health department to determine compliance with:~~

~~(a) 902 KAR 45:080 for a salvage distributor or a salvage processing plant; or~~

~~(b) KRS 217.025, 217.035, and 217.037 for a food manufacturing plant or food storage warehouse.~~

~~(2) A fee for the inspection of an establishment identified in subsection (1)(a) or (b) of this section shall be assessed according to the total square footage of the establishment:~~

~~(a) Zero – 1,000 square feet – \$120;~~

~~(b) 1,001 – 5,000 square feet – \$160;~~

~~(c) 5,001 – 20,000 square feet – \$200;~~

~~(d) 20,001 – 40,000 square feet – \$300;~~

~~(e) 40,001 – 80,000 square feet – \$400;~~

~~(f) 80,001 – 150,000 square feet – \$500; or~~

~~(g) 150,001 or more square feet – \$600.~~

~~(3) A fee shall be assessed for inspection of a retail food store and food service establishment conducted by the cabinet or local health department to determine compliance with the provisions of KRS 217.025, 217.035, 217.037, and 217.125(2) pertaining to:~~

~~(a) Adulteration;~~

~~(b) Misbranding;~~

~~(c) Packaging; or~~

~~(d) Labeling of food products.~~

~~(2) A fee shall be assessed for inspection of a food service establishment conducted by the cabinet or local health department to determine compliance with the provisions of 902 KAR 45:005.~~

~~(3) The(4) A fee for the inspection of a retail food store and a food service establishment shall be assessed according to the total square footage of the establishment:~~

~~(a) Zero - 1,000 square feet - ninety-three (93)[seventy-five (75)] dollars;~~

~~(b) 1,001 - 10,000 square feet - \$156[125];~~

~~(c) 10,001 - 20,000 square feet - \$218[175];~~

~~(d) 20,001 - 30,000 square feet - \$250[200]; or~~

~~(e) 30,001 or more square feet - \$375[300].~~

~~(4) [(5)] An application for a permit to operate a mobile retail food store shall be accompanied by an annual fee of sixty-two (62)[fifty (50)] dollars.~~

~~(5) [(6)] An application for a permit to operate a vending machine company shall be accompanied by the annual permit fee of \$125 plus a fee for the total number of vending machines operated by the applicant:~~

~~(a) One (1) – twenty-five (25) machines - sixty-two dollars and fifty cents (62.50);~~

~~(b) Twenty-six (26) – fifty (50) machines - ninety-three dollars and seventy-five cents (93.75);~~

~~(c) Fifty-one (51) – 100 machines - \$125;~~

~~(d) 101 – 150 machines - \$156.50; and~~

~~(e) 151 and over machines - \$250.~~

~~(5)[the annual fee required by KRS 217.811.~~

~~(7) An application for a permit to operate a permanent food service establishment shall be accompanied by an annual fee of \$125[100], plus the following fee if applicable:~~

~~(a) Fee for the number of seats:~~

~~1. One (1) to twenty-five (25) seats - seventy-five (75)[sixty (60)] dollars;~~

~~2. Twenty-six (26) to fifty (50) seats - \$125[100];~~

~~3. Fifty-one (51) to 100 seats - \$156[125];~~

~~4. 101 to 200 seats - \$187[150]; or~~

~~5. 201 or more seats - \$218[175];~~

~~(b) Drive-through window - \$156[125]; and~~

~~(c) Catering operation - \$137[140].~~

~~(6) [(8)] An application for a permit to operate a statewide mobile food unit shall be accompanied by an annual fee of \$200[160].~~

~~(7) [(9)] An application for a permit to operate a temporary food service establishment shall be accompanied by a fee according to the length of the event:~~

~~(a) One (1) to three (3) day event - sixty-two (62)[fifty (50)] dollars;~~

~~(b) Four (4) to seven (7) day event - ninety-three (93)[seventy-five (75)] dollars; or~~

~~(c) Eight (8) to fourteen (14) day event - \$125[100].~~

~~(8) An application for a permit to operate a farmer's market temporary food service establishment shall be accompanied by a fee of \$100.~~

~~(9) [(40)] An application for a permit to operate a restricted food concession or mobile restricted food concession shall be accompanied by an annual fee of \$125.[100.~~

~~(11) A request for a certificate of free sale or export authorizing a Kentucky food manufacturing plant holding a valid permit to operate to export a product outside of the United States shall be accompanied by a service fee of ten (10) dollars for each certificate requested.]~~

Section 2. Payment of Fees. [(1)] Fees shall be made payable to the local health department having jurisdiction by a:

~~(1) [(a)] Retail food store;~~

~~(2) [(b)] Mobile retail food store;~~

~~(3) [(e)] Vending machine company [and commissary];~~

~~(4) Statewide [(d)] mobile food unit;~~

~~(5) [(e)] Temporary food establishment;~~

~~(6) [(f)] Salvage distributor;~~

~~(g)] Restricted food concession; or~~

~~(7) [(h)] Food service establishment.]~~

~~(2) Fees shall be made payable to the Kentucky State Treasurer and forwarded to the Kentucky Department for Public Health by a:~~

~~(a) Food manufacturing plant;~~

~~(b) Salvage processing plant;~~

~~(c) Food storage warehouse; or~~

~~(d) Food manufacturing plant requesting a certificate for free sale or export.]~~

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 4, 2020

FILED WITH LRC: June 4, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on August 24, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-

6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the amount of the fees paid by retail food establishments, vending machine companies, and restricted food concessions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the fee structure to help support the department costs for permitting and inspecting retail food establishments, vending machine companies, and restricted food concessions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217.125 allows the secretary to promulgate regulations to establish a fee schedule for food processing establishments, farmer's market temporary food service establishments, temporary food service establishments, and retail food establishments. KRS 217.811 allows the secretary to establish a fee schedule for operating a vending machine company. This regulation outlines the schedule of fees to be paid for permit and inspection.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with addressing the cost to administer food permitting and inspection programs.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation establishes the reasonable fees for permitting and inspection of retail food stores, and all food service establishments. In addition, this amendment adds the fees for vending machine companies to this administrative regulation. The fee structure for food manufacturing establishments is being deleted from this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: House Bill 327 enacted during the 2018 legislative session removed the permitting and inspection fees for regulated entities covered under this administrative regulation. House Bill 129 enacted during the 2020 legislative session limits the fee increase to 25% until January 1, 2021. This amendment is necessary to establish the fee structure for entities permitted and inspected by the food safety program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217.125 authorizes the secretary to promulgate regulations for the efficient administration and enforcement of KRS 217.005 to 217.215 and to establish the fee structure for operating retail food establishments, food service establishments, and any temporary food service establishment. KRS 217.811 authorizes the secretary of the cabinet to promulgate administrative regulations to establish a fee for each application for permit to operate a vending machine company.

(d) How the amendment will assist in the effective administration of the statutes: This amendment revises the fee structure for all regulated entities to help offset the cabinet's cost to implement the inspection and permitting programs required by statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 21,000 food establishments are regulated under this administrative regulation. There are 100 vending machine companies registered with 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 questions (3) will have to take to comply with this administrative regulation or amendment: All permitted food service establishments, including retail food stores, will continue

to be inspected by the cabinet. Vending machine companies will also continue to be inspected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The current fee structure for food service establishments, including retail food stores and vending machines, is being increased by 25%.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All retail food stores, food service establishments, and vending machines are required to be inspected and permitted by the cabinet. The fees paid for inspection and permitting help to ensure retail food stores, food service establishments and vending machine companies are in compliance with federal and state laws. This helps to ensure the safety of the food supply chain.

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

(a) Initially: There are no additional costs initially.

(b) On a continuing basis: There are no 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: Agency funds and revenue received from permitting and inspection fees continue to be used 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: This amendment does result in an increase in fees paid by food manufacturing plants, food service establishments, and vending machine companies. The fee assessed on cosmetic manufacturers is new to this administrative regulation. There is no increase in funding necessary for this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The amendment to this administrative regulation increases the current fees associated with operating a permitted food service establishment, a retail food store, a statewide mobile food unit, a restricted concession, and a mobile retail food store by 25%.

The administrative cost to the cabinet is approximately \$150 per hour for inspectors of the listed food services establishments. This cost includes the salary of the inspector, fiscal year 2018 Kentucky Employee Retirement System (KERS) and Federal Insurance Contributions Act (FICA) contributions, and health and life insurance cost.

The average time for the inspection of a food service establishment is two and one-half (2.5) hours. The average costs for each inspection is \$375. The highest fee a food establishment will pay is \$375 for a retail food establishment and \$218 for a food service establishment.

The permitting fee for a vending machine company has been increased, but the schedule of fees for the number of vending machines is consistent with previous fee schedule in KRS 217.811.

(9) TIERING: Is tiering applied? Tiering is applied. The fee structure for food manufacturing plants and storage warehouses is based on the risk level of the foods produced or stored. The fee structure for food service establishments and retail food stores is based on the risk level of the food preparations. Vending machine companies with fewer vending machines pay a lesser permit fee.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment impacts the Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, and all local health departments.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.125 and KRS 217.811.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The change in fee structure will generate an estimated \$142,000 from the regulated entities in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The change in fee structure will continue to generate an estimated \$142,000 in subsequent years.

(c) How much will it cost to administer this program for the first year? The current cost to administer all programs under the Food Safety Branch within the Division of Public Health Protection and Safety is \$5,524,622.00. There is no anticipated increase in costs to administer permitting and inspection of food manufacturing plants, food storage warehouses, food service establishments, retail food stores, cosmetic manufacturers, and vending machine companies this first year.

(d) How much will it cost to administer this program for subsequent years? There will be no change in program cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 4:116. Low Income Home Energy Assistance Program or "LIHEAP"

RELATES TO: KRS 45.357, 194A.010, 194A.050(1), 194A.060, 194A.070, 45 C.F.R. Part 96 Subpart H, 42 U.S.C. 8621-8627, 42 U.S.C. 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 8621

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has the responsibility under 42 U.S.C. 8621 to administer the Low Income Home Energy Assistance Program to help low-income households meet the cost of home energy. This administrative regulation establishes the eligibility and benefits criteria for heating and cooling assistance. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with KRS 45.357. The imposition of additional requirements and responsibilities is to ensure necessary compliance with applicable state laws.

Section 1. Definitions. (1) "Agency" means Community Action Kentucky (CAK), or a local community action agency contracted to provide LIHEAP.

(2) "Annual low income home energy assistance program state plan" means an application prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87.

(3) "Authorized representative" means the person who presents to an agency a written statement signed by the head of the household, or spouse of the head of the household, authorizing that person to apply on the household's behalf.

(4) "Crisis component" means the component that provides assistance to households that are experiencing a home heating or cooling crisis.

(5) "Economic unit" means one (1) or more persons sharing common living arrangements.

(6) "Emergency" means, at the time of application, the household:

(a) Is without heat;

(b) Will be disconnected from a utility service within forty-eight (48) hours;

(c) Will be without bulk fuel within four (4) days; or

(d) Will be without cooling as specified in Section 3 of this administrative regulation.

(7) "Energy" means electricity, gas, and other fuel that is used to sustain reasonable living conditions.

(8) "Gross household income" means all earned and unearned income, including lump sum payments received by a household during the calendar month preceding the month of application.

(9) "Heating season" means the period from October through April.

(10) "Household" means an individual or group of individuals who are living together in the principal residence as one (1) economic unit and who purchase energy in common.

(11) "Household demographics" means an applicant's:

(a) Address;

(b) Household composition that includes:

1. Size;

2. Age group;

3. Relationship to applicant;

4. Sources of income;

5. Liquid assets; and

6. Type of housing; and

(c) Heat source.

(12) "Level of poverty" or "poverty level" means the degree to which a household's gross income matches the official poverty income guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(13) "Life-threatening situation" means, at the time of application, a household is or will be without heat or cooling within eighteen (18) hours and temperatures are at a dangerous level as determined by the National Weather Service.

(14) [~~"Poverty level"~~] means the "level of poverty", as defined in ~~subsection (12) of this section.~~

~~(15)~~ "Principal residence" means the place:

(a) Where a person is living voluntarily and not on a temporary basis;

(b) An individual considers home;

(c) To which, when absent, an individual intends to return; and

(d) Is identifiable from another residence, commercial establishment, or institution.

~~(15)~~~~(16)~~ "Subsidy component" means the heating or cooling component that provides an eligible household with:

(a) A ~~[one (1) time annual]~~ payment to the household's energy provider; or

(b) A payment [~~Payment~~] to a landlord, if utilities are included in the rent.

Section 2. Application. (1) A household or authorized representative applying for LIHEAP shall provide to an agency the following:

(a) Proof of household income;

(b) ~~[Statement of liquid resources;~~

~~(e)]~~ Most recent:

1. Heating bill;

2. Cooling bill; or

3. Verification that heating or cooling is included in the rent;

~~(c)~~~~(d)~~ Statement of household demographics; and

~~(d)~~~~(e)~~ A Social Security number, or a permanent residency card, for each household member.

(2) An application shall not be considered complete until the required information, as specified in subsection (1) of this section, is received by the agency.

Section 3. Eligibility Criteria. (1) Income. Gross household

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income shall be at or below 130 percent of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services pursuant to [; under authority of] 42 U.S.C. 9902(2), unless:

(a) Program funding is enhanced through a federal or state award; or

(b) The cabinet approves an increase to the poverty income guidelines due to funding availability.

(2) Liquid assets.

(a) The household shall have total liquid assets at time of application of not more than:

1. \$2,000;
2. \$3,000 if at least one (1) member in the household is:
 - a. Age sixty (60) or older; or
 - b. Disabled; or
3. \$4,000, if a member of the household has an illness which requires liquid resources to be accessed regularly for medical and living expenses.

(b) An excluded asset shall be:

1. A vehicle;
2. Household goods;
3. Personal effects;
4. A principal residence;
5. Cash surrender value of an insurance policy;
6. A prepaid burial policy;
7. Real property; and
8. Cash on hand or in a bank account if the cash is considered as income as specified under subsection (1) of this section.

(3) The household shall be responsible for paying:

- (a) Home heating;
- (b) Cooling costs; or
- (c) Heating or cooling costs as an undesignated portion of the rent.

(3)(4) Crisis component. In addition to meeting the criteria in subsections (1) and (2) [through (3)] of this section, an applicant shall:

- (a) Be within four (4) days of running out of fuel, if propane, fuel oil, coal, wood, or kerosene is the primary heat source;
- (b) Have received a past-due or disconnect notice, if natural gas or electric is the primary heat or cooling source; or
- (c) Have received a notice of eviction for nonpayment of rent, if home heating or cooling cost is included as an undesignated portion of the rent.

(4)(5) Summer cooling component. In addition to meeting the criteria in subsections (1) and (2) [through (3)] of this section, to be eligible to receive a window air conditioner unit, an applicant shall:

- (a) Be without an adequate source of cooling; and
- (b) Have a household member who:
 1. Has a health condition that requires cooling to prevent further deterioration, verified by a physician's statement prepared on the physician's letterhead;
 2. Is sixty-five (65) years of age or older; or
 3. Is under the age of six (6) years.

Section 4. Benefits. (1) For a subsidy component, payment to the household's heating or cooling [fuel] provider shall be made for the full benefit amount as follows:

(a) Benefits shall be determined prior to implementation of the component, based upon calculations from fuel usage data and from an average heating season energy cost for the six (6) primary heating fuels.

(b) The amount of benefits shall be based upon household income and type of heating or cooling source [fuel] used.

(c) A household with the lowest income and highest heating season fuel cost shall receive highest benefits.

(d) Benefits shall be a percentage of the average annual heating season energy cost of the primary heating fuel.

(e) A household living in federally assisted housing or receiving a utility allowance shall be eligible for lower benefits.

(2) For a crisis component, benefits shall be the minimum amount necessary to alleviate a heating or cooling crisis. A household living in federally assisted housing may be eligible.

(a) A benefit may be:

1. Fuel or other energy source for heating or cooling;
2. A space heater loaned on a temporary basis until:
 - a. Fuel is delivered; or
 - b. Another resource is located to alleviate the crisis;
3. A blanket or sleeping bag; [or]
4. Emergency shelter; or
5. A window air conditioner unit.

(b) In determining the minimum amount of assistance, an agency shall take into consideration a direct subsidy for payment of utility cost received by the household from another program.

(c) A household may receive assistance more than one (1) time, but shall not receive more than the maximum allowable during each component period for the primary heating fuel or cooling source [; minus a required copayment]. The maximum allowable benefit shall equal cost for delivery up to:

1. Two (2) tons of coal;
2. Two (2) cords of wood;
3. 200 gallons of propane;
4. 200 gallons of fuel oil;
5. 200 gallons of kerosene; or
6. [a.] \$400 for natural gas or electric, [effective January 1, 2009; or

b. \$250 for natural gas or electric, effective July 1, 2009;] unless:

a. [(i)] Program funding is enhanced through a federal or state award; or

b. [and (ii)] The cabinet approves an increase to the benefit amount due to funding availability.

(d) A household threatened with eviction whose heat or cooling costs are [is] an undesignated portion of the rent shall not receive more than the maximum allowable payment for the primary heating fuel or cooling source. [

(e) An eligible household, including a household residing in:

1. Subsidized or nonsubsidized housing, with an income at or above seventy-five (75) percent of the poverty level shall make a copayment equal to a percentage of the benefit amount needed to relieve the crisis.
2. Subsidized housing and receiving a utility allowance shall pay a higher copayment amount.

(f) The copayment amount required by paragraph (e) of this subsection shall be based on housing type and the household's percentage of poverty, as follows:

Percent Of Poverty	Copayment Percentage of Benefit for Households Residing in Nonsubsidized Housing	Copayment Percentage of Benefit for Households Residing in Subsidized Housing
0-74%	0%	0%
75-100%	10%	15%
101-130%	15%	20%

(3) For cooling component benefits, a household shall be eligible for:

(a) A one (1) time subsidy [annual] payment during each component period to the household's:

1. Electric utility provider; or
2. Landlord, if the cost of cooling is included as an undesignated portion of the rent;

(b) A window air conditioner unit, if:

1. Criteria in Section 3(4)(5) of this administrative regulation are met; and

2. The agency has the funding to purchase a window air conditioner unit or has a window air conditioner unit available for the household; and

(c) Benefits based on:

1. The household's level of poverty, unless program funding is enhanced through a federal or state award or the cabinet approves an increase to the poverty income guidelines due to funding availability; and

2.a. Subsidized housing with:

(i) Zero percent to one hundred (100) [seventy-four (74)] percent of poverty receiving up to fifty (50) dollars; or

(ii) 101 [Seventy-five (75)] percent to 150 [130] percent of

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poverty receiving up to one hundred (100)~~[seventy-five (75)]~~ dollars; or

2.b. Nonsubsidized housing with:

- (i) Zero to one hundred (100) ~~[seventy-four (74)]~~ percent of poverty receiving up to \$200 ~~[175]~~; or
- (ii) 101 ~~[Seventy-five (75)]~~ percent to 150 ~~[130]~~ percent of poverty receiving up to \$150 ~~[125]~~.

Section 5. Benefit Delivery Methods. (1)(a) Payment under a subsidy component shall be authorized by a one (1) party check made payable to the household's:

1. Energy provider; or
2. Landlord, if the cost of heating or cooling is included as an undesignated portion of rent.

(b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider if heating or cooling services were provided by more than one (1) provider. However, the total amount of the payments shall not exceed the maximum for the primary source of heating or cooling.

(2) For a crisis component, a direct cash payment shall not be made to the recipient. A payment shall be authorized to:

- (a) An energy provider by a one (1) party check upon delivery of fuel, restoration, or continuation of service;
- (b) A vendor who supplies a heater, blanket, ~~[er]~~ emergency lodging, or window air conditioning unit; or
- (c) A landlord, if heating or cooling cost is included in the rent.~~]~~

~~(3) For the cooling component, cash benefits shall be paid to a:~~

- ~~(a) Household's electric utility provider; or~~
- ~~(b) Landlord, if cooling cost is included in the rent.]~~

Section 6. Right to a Fair Hearing. (1) An individual who has been denied assistance or whose application has not been acted upon in accordance with time standards established in Section 8 of this administrative regulation shall be provided an administrative review by the agency.

(2) An individual dissatisfied with the results of an administrative review may request a hearing to be held in accordance with 921 KAR 2:055.

Section 7. Vendor Selection for Nonmetered Fuel Provider. (1) Subsidy component.

(a) An agency shall solicit vendors for all nonmetered fuels and shall establish an approved vendor listing.

(b) The agency shall place an advertisement for interested vendors in a local newspaper with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.

(c) A potential vendor shall provide the agency with a fixed price in gallons for kerosene, propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.

(d) A prospective vendor shall:

1. Allow agency and authorized federal or state representatives to inspect records upon request;
2. Maintain records to financial transactions regarding LIHEAP for a period of three (3) years;
3. Inform the agency if information is received that a household has obtained a benefit by misrepresentation;
4. Provide fuel as specified and at the price quoted;
5. Comply with federal and state law pertaining to equal employment opportunity; and
6. Comply with billing procedures established by the agency.

(e) A household shall select a vendor from the agency's approved vendor list.

(2) Crisis component.

(a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pick-up for each fuel type.

(b) Each agency shall maintain a list of approved vendors and prices throughout the crisis component.

(c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of delivery.

(d) For a household with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within:

1. Eighteen (18) hours for a life-threatening situation; or
2. Forty-eight (48) hours for an emergency situation.

Section 8. Time Standards. (1) Under a subsidy component, an eligibility determination shall be made by an agency within five (5) working days after receipt of information required by Section 2 of this administrative regulation.

(2) Under a crisis or cooling component, benefits shall be authorized so that a:

- (a) Crisis situation is resolved within forty-eight (48) hours; or
- (b) Life-threatening situation is resolved within eighteen (18) hours.

(3) Under a subsidy, crisis or cooling component, an applicant shall have five (5) working days from the date of application to provide required information to an agency as specified in Section 2 of this administrative regulation, or the application shall be denied.

Section 9. Effective Dates. (1) Implementation and termination dates for LIHEAP shall depend upon the availability of funds.

(2) If additional federal funds are made available, LIHEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation.

Section 10. Allocation of Federal Funds. (1) An amount of federal funds sufficient to provide benefits to eligible households that apply during the subsidy application period shall be reserved for a subsidy component.

(2) The balance of benefit funds for LIHEAP shall be reserved for a crisis component as follows:

(a) Benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's percentage of the statewide population at or below 130 ~~[100]~~ percent of the poverty level unless:

(i) Program funding is enhanced through a federal or state award; or

(ii) The cabinet approves an increase to the poverty income guidelines due to funding availability.

(b) \$400,000 of crisis benefit funds shall be identified as contingency funds and allocated to agencies based on need as approved in advance by the cabinet.

(3) \$25,000 or more shall be reserved for the Preventive Assistance Program to assist families with an energy payment not to exceed \$300 for each family if the payment:

- (a) Prevents the removal of a child from the family; or
- (b) Assists in reuniting a child with the family.

Section 11. Energy Provider Responsibilities. A provider accepting payment from LIHEAP for energy or services provided to an eligible recipient shall comply with the following provisions:

(1) Reconnection of utilities and delivery of fuel during a crisis component shall be accomplished upon certification for payment.

(2) A household shall be charged, in the normal billing process, the difference between actual cost of the home energy and amount of payment made through this program.

(3) A LIHEAP recipient shall be treated the same as a household not receiving benefits.

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of a recipient household due to receipt of a LIHEAP payment.

Section 12. Annual Plan. A copy of the state's annual Low Income Home Energy Assistance Program state plan prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87 may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

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ERIC C. FRIEDLANDER, Secretary

APPROVED: May 27 2020

FILED BY AGENCY: May 28, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held August 24, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and benefits criteria for the Low Income Home Energy Assistance Program (LIHEAP) in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility and benefits criteria for Kentucky's LIHEAP program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. The cabinet has responsibility under 42 U.S.C. 8621 to implement the LIHEAP program.

(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 eligibility and benefits criteria for the implementation of LIHEAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by increasing the eligibility income limit for services provided with Low Income Home Energy Assistance Program (LIHEAP) Block Grant funds when additional funding is available. The amendment also includes cooling benefits where only heating benefits were provided previously. The emergency version of this amendment is necessary in order to immediately utilize federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding as the Act authorizes states to raise the eligibility income limit for LIHEAP services furnished during fiscal years 2020 and 2021, including services furnished with the state's regular LIHEAP appropriations during those years. The increase in eligibility and services available that assist in paying for heating and cooling are especially needed for households that may be dealing with economic hardships due to the COVID-19 pandemic and resulting loss of employment. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)2. and 4., as federal funding will be lost if not used as soon as possible, and

the expansion of program eligibility and services will protect human health and welfare through providing assistance in paying for summer cooling and winter heating utilities to those meeting the eligibility requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding in providing services for more eligible LIHEAP applicants. The CARES Act authorizes an increase in the eligibility income limit for this program in fiscal years 2020 and 2021 and the cabinet intends to use leftover LIHEAP funds for future years, if available.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for program eligibility and compliance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of the LIHEAP program in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet holds a master agreement with Community Action Kentucky (CAK), which subcontracts with twenty-two community action agencies and one local government to provide LIHEAP benefits throughout Kentucky's 120 counties. In SFY 2019, Kentucky served approximately 156,694 households through LIHEAP. Approximately 78,306 households were served under the LIHEAP subsidy component and 78,388 were served under the LIHEAP crisis component.

(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 increases the eligibility income limit for LIHEAP services; therefore, allowing the provision of more home energy assistance through the utilization of federal CARES Act dollars. The amendment also expands the program to allow assistance in paying summer cooling utilities where only winter heating assistance was provided previously. The increase in eligibility and services are especially needed in households that may be dealing with economic hardships due to the COVID-19 pandemic and resulting loss of employment. No additional actions are required by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs associated with providing LIHEAP services will be absorbed within the sub-award of the federal LIHEAP Block Grant. There is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The eligibility income limit for programs and services provided through LIHEAP Block Grant funding is increased through this amendment, additional cooling services are provided, and additional funding is being provided through the CARES Act; therefore, there should be an increase in the provision of programs and services for eligible households.

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

(a) Initially: The U.S. Department of Health and Human Services allocates LIHEAP funding annually to states. No general funds are used in the implementation of this regulation as LIHEAP is funded 100% by federal funds. CARES Act funding for this program is \$13,745,001.00.

(b) On a continuing basis: The cabinet will ensure that the programs and state administrative activities funded under the LIHEAP Block Grant are within federal appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is 100% federally funded. No general funds are used in funding LIHEAP. The source of these funds is the LIHEAP Block Grant and CARES Act funding.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation. The cabinet will implement and enforce this administrative regulation in subsequent years within federal appropriations for LIHEAP.

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

(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. 42 U.S.C. 8621
2. State compliance standards. KRS 45.357, 194A.010, KRS 194A.050(1)
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 8621
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter requirements than those required by the federal mandate. However, the current administrative regulation in place imposes additional responsibilities and requirements than those required by federal mandate. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with state law.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional reporting requirements are necessary in order to comply with KRS 45.357. The imposition of the additional requirements and responsibilities is necessary to ensure compliance with applicable state laws.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation. The cabinet holds a master agreement with Community Action Kentucky (CAK), which subcontracts with twenty-two community action agencies and one local government to provide LIHEAP benefits throughout Kentucky's 120 counties.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45.357, 194A.010, 194A.050(1), 194A.060, 194A.070, 45 C.F.R. Part 96 Subpart H, 42 U.S.C. 8621-8627, 42 U.S.C. 9902(2)
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the state or local government during the first year.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the state or local government in subsequent years.
 - (c) How much will it cost to administer this program for the first year? The cabinet will utilize the administrative funds available under the LIHEAP Block Grant to administer these programs in the first year. Costs will be within available appropriations.
 - (d) How much will it cost to administer this program for

subsequent years? The cabinet will utilize the administrative funds under the LIHEAP Block Grant to administer these programs in subsequent years. Costs will be within available appropriations.

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

- Revenues (+/-):
- Expenditures (+/-):
- Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

922 KAR 6:010. Standards for community action agencies.

RELATES TO: KRS 45.357, 45A.455, 61.800-61.850, 61.870-884, 194A.060, 273.405-273.453, Chapter 344, 45 C.F.R. 96, 42 U.S.C. 9901-9926

STATUTORY AUTHORITY: KRS 194A.050(1), 273.448(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 273.448(1)(a) requires the state administering agency to establish in accordance with applicable state and federal laws and regulations, standards for community action agencies by which the administrative, fiscal and programmatic effectiveness of the federal act shall be measured. This administrative regulation establishes the requirements for the operation and oversight of the community action agencies relative to the community services block grant funding, intended to provide services for residents meeting poverty income guidelines issued by the U.S. Department of Health and Human Services. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with KRS 45.357, and the Kentucky Civil Rights Laws, KRS Chapter 344, are more inclusive than those required under 42 U.S.C. 9918(c)(1). The imposition of additional requirements and responsibilities is to ensure necessary compliance with applicable state laws.

Section 1. Definitions. (1) "Commissioner" means the Commissioner for the Department for Community Based Services, Cabinet for Health and Family Services.

- (2) "Community action agency" is defined by KRS 273.410(2).
- (3) "Community action board" means the board of directors of a community action agency that [which] is a political subdivision.
- (4) "Community Services Block Grant" or "CSBG" means Community Services Block Grant funds made available by 42 U.S.C. 9901-9926.
- (5) "Designating official" means the chief elected official of the eligible political subdivision or subdivisions if the political subdivision is a community action agency.
- (6) "Governing board" means the board of directors of a private nonprofit community action agency.
- (7) "Public community action agency" means a community action agency that is established as a division of local government.

Section 2. Board of Directors. (1) Each community action agency shall establish and maintain a board of directors in accordance with KRS 273.437 and 273.439.

- (2) Governing boards and community action boards shall adopt written bylaws. The bylaws shall include:
 - (a) The purpose of a community action agency;
 - (b) Duties and responsibilities of the board;
 - (c) Number of members on the board;

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- (d) Qualifications for a board membership;
 - (e) The types of membership;
 - (f) The method of selecting a member;
 - (g) Terms of a member;
 - (h) Officers and duties;
 - (i) Method of electing an officer and chairperson;
 - (j) A standing committee, if applicable;
 - (k) Provision for approval of programs and budgets;
 - (l) The frequency of board meetings and attendance requirements; and
 - (m) Provision for official record of meetings and action taken.
- (3) The boards and designating officials:
- (a) May delegate the responsibility to carry out a program of a community action agency and fiscal requirements to an executive director; and
 - (b) Shall not delegate final approval, responsibility, accountability, or direction of policy, except for a public community action agency.

Section 3. Board Meetings. (1) A board meeting shall be open to the public in accordance with KRS 61.800-61.850.

(2) A simple majority shall constitute a quorum for a board meeting.

(3)(a) A meeting of a governing board or a community action board shall be recorded.

- (b) Minutes shall be made of the meeting.
- (c) The minutes shall include:
 - 1. Date, time, and place of meeting;
 - 2. Names of members attending;
 - 3. Topics discussed, problems, recommendations made or presented, and a plan for change and improvements;
 - 4. Decisions reached and actions taken;
 - 5. An executive director's report and other reports as are presented; and
 - 6. Recommendations made by the community action board to designating officials of the eligible political subdivision.

- (d) The minutes shall be:
 - 1. Approved by the board of directors and signed by the appropriate officer; and
 - 2. Copied and distributed to each board member, the executive director, and the department within thirty (30) days of the minutes' approval in accordance with subparagraph 1 of this paragraph.

Section 4. Administration. (1) A community action agency shall meet the federal assurances and reporting requirements in accordance with 42 U.S.C. 9901-9926 and 45 C.F.R. 96.

(2) A community action agency shall adopt the organizational standards for eligible entities pursuant to the Community Services Block Grant Information Memorandum, Transmittal No. 138 from the U.S. Department of Health and Human Services, dated January 26, 2015.

(3) A community action agency in accordance with KRS 273.441 and 273.443, and with the knowledge and concurrence of appropriate officials and boards as required in KRS 273.437 and 273.439, shall:

- (a) Submit necessary reports, records, or other information to:
 - 1. Determine fiscal, administrative, and programmatic effectiveness in utilization of CSBG funds; and
 - 2. Fulfill requirements of KRS 45.357;
- (b) Except for a public community action agency, develop written personnel policies including:
 - 1. A job classification plan with the provision of a systematic arrangement of job positions in the agency indicating title, related duties, and responsibilities for each position. For those positions that [which] are sufficiently similar as to the duties performed and to the scope of responsibility, equal pay ranges shall be:
 - a. Allocated to the same job classification; and
 - b. Reviewed at least every four (4) years;
 - 2. A job specification for each job classification, including required education, experience, training, skills and other qualifications required that [which] shall be reviewed at least every four (4) years;
 - 3. A compensation plan with the provision of a pay plan for

community action agency employees outlining pay grades or salary rates, salary adjustments, salary advancements, and overtime adjustments as appropriate for the job classifications. Rates of pay shall be:

- a. Consistent with the functions outlined in the job classification plan; and
 - b. Reviewed at least every four (4) years;
4. Attendance and leave policies that shall:
- a. Be reviewed at least every four (4) years; and
 - b. Include the accumulation and credit of:
 - (i) Annual leave;
 - (ii) Sick leave;
 - (iii) Compensatory or overtime leave;
 - (iv) Military leave;
 - (v) Leave related to the birth or adoption of a child;
 - (vi) Court leave;
 - (vii) Voting leave;
 - (viii) Absence without leave; and
 - (ix) Other conditions of specific leave;
5. A fringe benefit plan that shall:
- a. Be reviewed every four (4) years; and
 - b. Include the coverage and conditions of those items provided by the community action agency, such as:
 - (i) Basic salary or wage rates including hospitalization insurance;
 - (ii) Dental insurance;
 - (iii) Holidays;
 - (iv) Disability leave;
 - (v) Personal leave;
 - (vi) Retirement or pension; and
 - (vii) Deferred compensation;
 - 6. An affirmative action plan with a policy statement that the community action agency's intention is to give equal opportunity in hiring, advancement opportunities, and in work assignments in accordance with KRS Chapter 344;
 - 7. A personnel grievance procedure that shall:
 - a. Include a plan for resolving employee grievances and complaints; and
 - b. Describe the method that the community action agency follows if an employee is dissatisfied with some aspect of the employee's working conditions. The procedure shall outline:
 - (i) How the employee files a complaint;
 - (ii) Who reviews the complaint;
 - (iii) Who hears the complaint;
 - (iv) Who may attend a hearing;
 - (v) Length of time for the hearing decision; and
 - (vi) The next level of appeal, if the employee is still dissatisfied with the hearing results; and
 - 8. Hiring and firing practices, with a plan for:
 - a. Hiring an employee;
 - b. Promotions;
 - c. Demotions;
 - d. Job postings and advertisements;
 - e. Resignations;
 - f. Layoff procedures;
 - g. Disciplinary actions; and
 - h. Dismissal procedures;
 - (c) Make available a copy of the community action agency's personnel policies to staff;
 - (d) Ensure that there is no discrimination against an applicant or recipient of CSBG services in accordance with KRS 344.015(2), 344.020, and 42 U.S.C. 9918(c)(1);
 - (e) Be responsible for compliance with conditions of contracts and grants, appropriate state and federal laws, administrative regulations, and cost principles;
 - (f) Indemnify the cabinet against a claim, including attorney fees and other costs of litigation that [which] may result from damage caused by the community action agency's employee, negligent acts, or omissions of the community action agency's agent, employee, or subcontractor;
 - (g) Ensure that a notice, information pamphlet, research report, and similar public notice prepared and released by the community action agency pursuant to its contract for CSBG funds shall include the statement: "This project is funded, in part, under

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a contract with the Cabinet for Health and Family Services with funds from the Community Services Block Grant Act of the U.S. Department of Health and Human Services"; and

(h) Ensure that no employee or representative of the community action agency with procurement authority shall participate either directly or indirectly in an activity that is in conflict with the provisions of KRS 45A.455 and 42 U.S.C. 9918.

(4)(a) Except for a public community action agency, a community action agency with the knowledge and concurrence of appropriate officials and boards, shall:

1. Develop written fiscal policies and a manual; and
2. Review and update the policies and the manual at least annually.

(b) Fiscal records shall be maintained in accordance with generally acceptable accounting procedures and practices and in conformity with 42 U.S.C. 9916(a).

(c) A current written financial report shall be presented to a board of directors:

1. At least quarterly; or
2. More frequently, if requested by the board or the cabinet.

(5)(a) A community action agency shall:

1. Develop written programmatic operation policies and a manual; and
2. Review and update the policies and the manual at least annually.

(b) A community action agency's program manual, which may be characterized as an operations manual, shall include:

1. Criteria for determining eligibility of an individual for CSBG programs;
2. The intake process including information needed to approve an applicant;
3. Procedures for accepting a referral from another agency;
4. Instructions for records to be kept on applicants, clients, and statistical data on intake;
5. Procedures for reports to be made to the cabinet and frequency;
6. Procedures to be followed if an applicant is found ineligible;
7. Complaint procedures;
8. A description of each program's organizational structure, major lines of authority, and areas of responsibility within the CSBG programs; and
9. Procedures for documenting the extent of participation of individuals who are low income in the community action agency's CSBG programs.

(6)(a) A community action agency shall ensure that a client dissatisfied with services rendered under a CSBG contract shall be provided an opportunity to file a formal complaint and to be heard at the local level.

(b) A client may attempt to resolve the issue by submitting a written complaint to the community action agency within thirty (30) calendar days after the date of the community action agency's action or alleged act.

(c) The community action agency shall provide the client a written response to the complaint within thirty (30) calendar days of receipt of the client's complaint in accordance with paragraph (b) of this subsection.

(d) If extenuating circumstances concerning the client's case prolong review of the complaint, the executive director of the community action agency may grant an extension to the response timeframe given in paragraph (c) of this subsection.

(e)1. A client dissatisfied with a final written decision rendered by the community action agency in response to a complaint may request that the commissioner review the complaint and the community action agency's response.

2. A request for review shall be submitted to the commissioner within ten (10) days of the receipt of the community action agency's response.

3. Upon completion of the review, the commissioner or designee shall render a written order regarding the complaint within thirty (30) days unless:

a. Extenuating circumstances prolong the review of the complaint; and

b. The commissioner or designee notifies the client of the need for an extension to the timeframe specified in this

subparagraph.

4. The community action agency shall abide by the order.

(f) The complaint and hearing procedures shall be posted in each agency office.

(7) A community action agency shall ensure the design, implementation, and documentation of in-service training program for staff. Additional training shall also be documented for staff.

Section 5. Income Eligibility, Validation, and Determination. (1) To be eligible to participate in services and programs funded with CSBG funds, an individual's or family's income shall be at or below 125 percent of the current poverty level issued each year by the United States Department of Health and Human Services and published in the Federal Register, unless:

(a) Program funding is enhanced through a federal or state award; or

(b) The cabinet approves an increase to the poverty income eligibility guidelines due to funding availability.

(2) Information and referral services shall be provided to an individual or family without regard to income.

(3) If screening for programs where the eligibility factor is higher, the factor for that other program applies.

(4) The individual or family head shall sign a document attesting to the amount of declared income and eligibility to receive services.

(5) A community action agency or its worker shall require that a client produce proof of income eligibility in which a dated copy of the client's documentation shall be placed in the client's file.

(6) Initial eligibility shall be:

(a) Determined within thirty (30) days of application;

(b) Redetermined if there is a change in circumstance; and

(c) Redetermined at least annually, if there is not a change in circumstance.

Section 6. Maintenance of Case Records. (1) A log shall be maintained by a community action agency on a referral made by an outside agency or individual including:

(a) Date of referral;

(b) A referring agent; and

(c) Reason for referral and disposition.

(2) A CSBG case record shall be maintained on each applicant accepted for a service or benefit.

(a) The record shall include:

1. Intake information as follows:

a. Name, address, and telephone number of the applicant;

b. Birthdate;

c. Sex;

d. Race or ethnic origin;

e. Proof of income;

f. Level of education completed;

g. A presenting problem;

h. Date of presenting problem;

i. Staff member gathering information;

j. Referral agent, if applicable;

k. Approval or disapproval for services or benefits and date; and

l. The signature of the person making the determination or the referral;

2. Client progress toward a documented goal during a service or benefit period;

3. Chronological recording of supervisory and staff contacts with a client during the service or benefit period;

4. Copies of correspondence and other pertinent information;

5. Redetermination of eligibility, if required by Section 5(6) of this administrative regulation; and

6. Information regarding any termination of services and benefits.

(b) A community action agency shall ensure that a client case record is maintained in conformity with existing laws pertaining to confidentiality in accordance with KRS 194A.060.

(c) The records shall be maintained in a location that [which] is secure and convenient to service delivery staff.

(3) A community action agency shall ensure development and implementation of a written client case record retention and

disposal schedule.

(4) A public community action agency or any program or subdivision of a community action agency meeting the definition of a public agency as defined in KRS 61.870(1) shall comply with the open records law, KRS 61.870-61.884.

Section 7. Monitoring and Evaluation Reports. A community action agency in accordance with 42 U.S.C. 9914, Community Services Block Grant Information Memorandum, Transmittal No. 138 from the U.S. Department of Health and Human Services, KRS 273.441, 273.443, and 273.448(1), and with the knowledge and concurrence of appropriate officials and boards as required in KRS 273.437 and 273.439, shall meet the following:

(1) Ensure the development of a data collection and recordkeeping system that allows for administrative, programmatic, and fiscal monitoring and evaluation;

(2) Ensure the design and implementation of program reviews and studies to determine under or over utilization of each program, and progress towards goals and objectives; and

(3) Permit monitoring, review, and evaluation of the total community action agency operation by the department or its designee.

Section 8. Matching Requirement. (1) A contractor receiving CSBG funds pursuant to 922 KAR 6:045 [3:040] shall provide a twenty (20) percent local match in accordance with KRS 273.446(3).

(2) The cabinet may waive the local match required by subsection (1) of this section if additional state or federal funds are provided.

Section 9. CSBG Program State Plan. A copy of the state's CSBG program plan may be obtained by submitting a written request to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 10. Incorporation by Reference. (1) "Community Services Block Grant Information Memorandum, Transmittal No. 138 from the U.S. Department of Health and Human Services", January 26, 2015, 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.

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 27, 2020

FILED WITH LRC: May 28, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held August 24, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: Donna Little, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the operation and oversight of Kentucky's community action agencies providing services for residents meeting poverty income guidelines issued by the U.S. Department of Health and Human Services in accordance with the Community Services Block Grant.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for community action agencies and qualify for the receipt of federal funds under the Community Services Block Grant.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes, which require the state administrating agency to establish standards for community action agencies.

(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 standards for the operation and oversight of the community action agencies under the Community Services Block Grant.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing administrative regulation by increasing the eligibility income limit for programs and services provided through Community Services Block Grant funding. The emergency version of this amendment is necessary in order to immediately utilize federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding as the Act authorizes states to raise the eligibility income limit for CSBG services furnished during fiscal years 2020 and 2021, including services furnished with the state's regular CSBG appropriations during those years. Each community action agency determines the most appropriate use of the funds based on the needs identified in their area, but programs and services frequently include nutrition assistance, providing personal care items, assisting with rent or utility emergency payments, providing employment services and referrals, assisting substance abuse programs and domestic violence shelters, and more. The increase in eligibility and funding are especially needed in low-income populations that may be dealing with economic hardships due to the COVID-19 pandemic and resulting loss of employment. The amendment also gives the cabinet the authority to waive the required local matching funds for supplemental state or federal funding as community action agencies may not be able to match the funds due to decreased donations and economic hardship during the COVID-19 pandemic. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)2. and 4., as federal funding will be lost if not used as soon as possible, and the expansion of program eligibility will protect human health through the provision of community services to low-income populations in Kentucky.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding in providing services and programs to low-income populations in Kentucky. The CARES Act authorizes an increase in the eligibility income limit for these programs and services in fiscal years 2020 and 2021.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for community action agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of community services and programs in low-income populations in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet contracts with twenty-three

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community action agencies that serve all 120 Kentucky counties to provide community services and programs to low-income populations in Kentucky. This currently includes twenty-two non-profit entities and one public entity. In fiscal year 2018, CSBG funds were used to serve 307,668 low-income individuals (152,273 households).

(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 increases the eligibility income limit for programs and services provided through Community Services Block Grant funding; therefore, allowing the provision of more programs and services through the utilization of federal CARES Act dollars. The increase in eligibility and funding are especially needed in low-income populations that may be dealing with economic hardships due to the COVID-19 pandemic and resulting loss of employment. The amendment also gives the cabinet the authority to waive the required local matching funds for supplemental state or federal funding so the entities identified above will not always be required to provide a local match.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs associated with providing community services and programs will be absorbed within the sub-award of the federal Community Services Block Grant to the regulated entities. The amendment waives the requirement to provide a local match in some instances. There is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The eligibility income limit for programs and services provided through Community Services Block Grant funding is increased through this amendment and additional funding is being provided through the CARES Act; therefore, there should be an increase in the provision of programs and services in low-income populations. The amendment also waives the local match required from contract entities in some scenarios.

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

(a) Initially: The cabinet will utilize the available administrative funds under the Community Services Block Grant to implement this amendment. The additional funding for this program provided by the CARES Act is \$16,857,000.

(b) On a continuing basis: The cabinet, in partnership with Kentucky's Community Action Network, will ensure that the programs and state administrative activities funded under the Community Services Block Grant are within federal appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds provided by the Community Services Block Grant and state general funds for community action agencies' audits are used for the implementation and enforcement of this administrative regulation. Federal CARES funding will be used to provide additional community services and programs in 2020 and 2021.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased 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 will be applied in a like manner statewide.

mandate. 45 C.F.R. 96, 42 U.S.C. 9901-9926

2. State compliance standards. KRS 45.357, 194A.050(1), 273.405-273.453, Chapter 344

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 96, 42 U.S.C. 9901-9926

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter requirements than those required by the federal mandate. However, the current administrative regulation in place imposes additional responsibilities and requirements than those required by federal mandate. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with state law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional reporting requirements are necessary in order to comply with KRS 45.357. The Kentucky Civil Rights Laws, KRS Chapter 344, are more inclusive than those required under 42 U.S.C. 9918(c)(1). The imposition of the additional requirements and responsibilities is necessary to ensure compliance with applicable state laws.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, and one public and 22 quasi-governmental non-profit entities in Kentucky's Community Action Network will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45.357, 45A.455, 61.870-884, 194A.050(1), 194A.060, 273.405-273.453, Chapter 344, 45 C.F.R. 96, 42 U.S.C. 9901-9926.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet will utilize the state administrative funds available under the Community Services Block Grant to administer these programs in the first year. Federal CARES funding will be used to provide additional community services and programs in 2020 and 2021. Costs will be within available appropriations.

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the state administrative funds under the Community Services Block Grant to administer these programs in subsequent years. Federal CARES funding will be used to provide additional community services and programs in 2020 and 2021. Costs will be within available appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal

NEW ADMINISTRATIVE REGULATIONS

Public comment periods are at least two months long. For other regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

**AGRICULTURAL EXPERIMENT STATION
(New Administrative Regulation)**

12 KAR 4:075. Licenses and fertilizer product registration.

RELATES TO: KRS 250.366(16),(26), 250.371 – 250.461
STATUTORY AUTHORITY: KRS 250.371, 250.421
NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.371 authorizes the Kentucky Agricultural Experiment Station Director to promulgate administrative regulations for product registration and licensing of custom mix blending facilities. KRS 250.421 requires the director to promulgate administrative regulations necessary to implement KRS 250.371 through 250.451. This administrative regulation establishes requirements for fertilizer product registration and licensing.

Section 1. Definitions.

- (1) "Registrant" means the person who registers fertilizer.
- (2) "Licensee" means the person who is licensed to distribute fertilizer.

Section 2. An applicant for registration shall complete and submit to the Fertilizer Regulatory Program:

- (1) Application for Registration of Farm Fertilizer, Form RS-29-01 Farm Fertilizer;
- (2) Application for Registration of Specialty Fertilizer, Form RS-29-03 Specialty Fertilizer (10 Pounds or Less).
 - (a) In accordance with KRS 250.371(1), a fifty (50) dollar registration fee shall accompany form RS-29-03; and
 - (b) In accordance with KRS 250.381(4) a fifty (50) dollar inspection fee shall accompany form RS-29-03.
- (3) Application for Registration of Specialty Fertilizer, Form RS-29-04. Specialty Fertilizer (Packages Greater Than 10 Pounds). In accordance with KRS 250.371(1), a fifty (50) dollar registration fee shall accompany the submitted application form.

Section 3. An applicant for licensing shall complete and submit to the Fertilizer Regulatory Program:

- (1) Application for Custom Mix Fertilizer Blending, Form RS-29-02 Bulk Fertilizer License; or
- (2) Application for Custom Mix Specialty Fertilizer Blending, Form RS-29-05 Bulk Specialty Fertilizer License. In accordance with KRS 250.371(4), a one-hundred (100) dollar license fee shall accompany the submitted application form.

Section 4. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Application for Registration of Farm Fertilizer", Form RS-29-01, October 2019;
 - (b) "Application for Registration of Specialty Fertilizer", Form RS-29-03, October 2019;
 - (c) "Application for Registration of Specialty Fertilizer", Form RS-29-04, October 2019;
 - (d) "Application for Custom Mix Fertilizer Blending", Form RS-29-02, October 2019; and
 - (e) "Application for Custom Mix Specialty Fertilizer Blending", Form RS-29-05, October 2019.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 27, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, email smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: Establishes the forms needed to register fertilizer products and license fertilizer blenders.
 - (b) The necessity of this administrative regulation: Procedures are needed to register products and license firms.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 250.421 and KRS 250.371 the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 4.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Establishes the forms needed in regulation.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation:
 - (b) The necessity of the amendment to this administrative regulation:
 - (c) How the amendment conforms to the content of the authorizing statutes:
 - (d) How the amendment will assist in the effective administration of the statutes:
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register fertilizer products and license blending facilities in Kentucky will be affected by this administrative regulation.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new action. These forms have been in use, but are just now being placed in regulation
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this regulation.
 - (c) As a result of compliance, what benefits will accrue to the

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entities identified in question (3): This places our registration forms in regulation.

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

- (a) Initially: No cost
(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.371, 250.421.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

- Revenues (+/-):
Expenditures (+/-):
Other Explanation: No fiscal impact

AGRICULTURAL EXPERIMENT STATION (Repealer)

12 KAR 4:091. Repeal of 12 KAR 4:090, 4:120 and 4:160.

RELATES TO: KRS 250.366(7), 250.371 – 250.451

STATUTORY AUTHORITY: KRS 250.366(7), 250.366(17) and 250.421

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.366(7) authorizes the Kentucky Agricultural Experiment Station Director to promulgate administrative regulations for the inspection and analysis of plant nutrient guarantees. KRS 250.421 requires the director to promulgate administrative regulations necessary to implement KRS 250.371 through 250.451. This administrative regulation repeals 12 KAR 4:090, 12 KAR 4:120 and 4:160 because the requirements are consolidated into 12 KAR 4:080.

Section 1. The following: administrative regulations are hereby repealed:

- (1) 12 KAR 4:090, Guaranteed analysis;
(2) 12 KAR 4:120, Definition of "percentage"; and
(3) 12 KAR 4:160, Guaranteed nutrients.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: June 11, 2020

FILED WITH LRC: June 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2020, at 10:00 a.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, KY 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeal of 12 KAR 4:090, 4:120 and 4:160 as these will be placed into 12 KAR 4:080

(b) The necessity of this administrative regulation: Repealing and then placing into one regulation places all of the labeling of fertilizers in one regulation

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 250.421 the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will consolidate the labeling into one regulation.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register fertilizer labels in Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new actions will be needed as the labeling requirements will be consolidated and not removed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This will place the labeling requirements within one regulation.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Regulatory Services regular annual budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.421.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No effect

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

DEPARTMENT OF AGRICULTURE Office of Agricultural Marketing (New Administrative Regulation)

302 KAR 60:010 Produce Safety

RELATES TO: KRS 260, 21 C.F.R. Part 112

STATUTORY AUTHORITY: KRS 260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260 authorizes the Commissioner of Kentucky Department of Agriculture to promulgate administrative regulations for the efficient administration and enforcement of Kentucky's Produce Safety Rule for covered produce and covered farms. This administrative regulation establishes a uniform code for the growing, harvesting, packing, and holding of produce for human consumption.

Section 1. Definitions. (1) "Adulterated" means covered produce in any growing, harvesting, packing, or holding area that

has been subject to conditions whereby it may have become contaminated with filth or microorganisms of public health significance, or whereby it may have been rendered injurious to health.

(2) "Certificate of compliance" means a certificate issued by the Department for covered farms that are inventoried and under regulatory inspection by the Department.

(3) "Certificate of exemption" means a certificate of exempt status issued by the Department pursuant to Section 5 of this Administrative Regulation for:

(a) Farms growing only produce that is rarely consumed raw,

(b) Farms growing only produce for personal consumption or produced for consumption on the farm,

(c) Produce that receives commercial processing that adequately reduces the presence of microorganisms of public health significance, or

(d) Farms where, during the previous 3-year period, a farmers' average of all produce sales was \$25,000 or less (on a rolling basis), adjusted for inflation using 2011 as the baseline year for calculating the adjustment.

(4) "Certificate of qualified exemption" means a certificate of exempt status issued by the Department pursuant to Section 4 of this Administrative Regulation.

(5) "Covered farm" means a farm that is subject to the provisions of 21 C.F.R. Part 112, KRS 260, and this Administrative Regulation.

(6) "Covered produce" is defined by KRS 260.

(7) "Department" means Kentucky Department of Agriculture.

(8) "Egregious condition" means a practice, condition or situation that is reasonably likely to lead to:

(a) Serious adverse health consequences or death from the consumption of or exposure to covered produce; or

(b) An imminent public health hazard if corrective action is not taken immediately.

(9) "Farm" is defined in 21 C.F.R. Part 112 and includes both a Primary Production Farm and a Secondary Activities Farm.

(10) "Farmer" is defined as the owner, operator, or agent in charge of a covered farm that is subject to some or all of the requirements in 21 C.F.R. 112, KRS 260 and this administrative regulation.

(11) "Inspection" means an official regulatory visit conducted by the Department for the purpose verifying compliance with 21 C.F.R. Part 112, KRS 260 and this administrative regulation.

(12) "Microbial pathogens" means microorganisms of public health significance".

(13) "No Action Indicated" or "NAI" means a farm inspection classification that indicates the farm is in substantial compliance, with no violating conditions or only minor violations noted at the time of inspection.

(14) "Official Action Indicated" or "OAI" means a farm inspection classification that indicates one or more egregious violations materially related to food safety have been cited, or that an uncorrected VAI condition on a previous inspection has been cited.

(15) "Qualified Exempt Farm" means a farm that has met the eligibility requirements of KRS 260 for qualified exemption and has been issued a certificate of qualified exemption from the Department.

(16) "Stop Use Order" is defined as an order issued by the Department declaring the cessation of a covered activity; use of a utensil, piece of equipment or machinery, or water distribution device; or room or area used for the production, handling or storage of covered produce.

(17) "Voluntary Action Indicated" or "VAI" means a farm inspection classification that indicates a farm is generally in compliance, with only minor violations cited; however the violations cited are not significant enough to pose an imminent health hazard.

Section 2. Right to Scheduled On-Site Verification Visits. The Department reserves the right to schedule, at any reasonable time, an on-site visit to verify whether a farm is exempt, covered, or eligible for a Qualified Exemption.

Section 3. Produce Farm Survey. All covered farms, and

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farms eligible for exemption shall be required to complete an Informational Survey provided by the department annually.

Section 4. Qualified Exemption. (1) A covered farm that meets the requirements for a qualified exemption as outlined in KRS 260 may apply for qualified exempt status with the Department by submitting an Application for Qualified Exemption, available from the Department.

(2) Upon the Department's review of the Application for Qualified Exemption, a farm verified as having met the requirements for exemption status shall be issued a Certificate of Qualified Exemption.

(3) A Certificate of Qualified Exemption shall be non-transferrable.

(4) A Certificate of Qualified Exemption shall only be issued:

- (a) In the name of the applicant; and
- (b) For the FSA location or locations identified in the application.

(5) Unless otherwise withdrawn, the Certificate of Qualified Exemption shall be valid for up to three (3) years.

(6) Qualified Exemption status is good for the balance of the calendar year of issuance regardless of date, and the two calendar years ending December 31 thereafter. Renewals for an additional three year period shall be upon submission of an Application for Qualified Exemption and accompanied by verification of the successful completion of an FDA-approved training course by the farmer.

(7) Failure to submit an updated Application for Qualified Exemption to the Department by the expiration date noted on the certificate of exemption shall result in forfeiture of the qualified exemption and the presumption by the Department that the farm is subject to all requirements of the Produce Safety Rule.

(8) All qualified exempt farms shall be required to complete a yearly evaluation of qualified exemption status. Once a farm's qualified exempt status changes to covered status, the farmer shall immediately notify the Department.

(9) The Department may withdraw a qualified exemption as set forth under 21 C.F.R. Part 112 Subpart R or this administrative regulation. Withdrawal shall be by written notice to the farm

(10) If a farm's qualified exemption is withdrawn by the Department, the farm shall be considered "covered" and will be subject to all requirements of 21 C.F.R. Part 112, KRS 260 or this administrative regulation.

(11) Any applicant whose application for qualified exemption has been denied or withdrawn by the Department may appeal the action as provided for in Section 12 of this administrative regulation.

(12) Any person whose qualified exemption has been withdrawn by the Department may submit a written request for reinstatement of the qualified exemption.

(13) Within ten (10) days following receipt of a written request for reinstatement, including a statement signed by the farmer that in their opinion the condition causing the withdrawal of qualified exemption has been corrected, the Department shall make an inspection, and if the inspection reveals that the condition causing the withdrawal has been corrected, the qualified exemption shall be reinstated.

Section 5. Certificate of Exemption: (1) A farm that meets the requirements for an exemption, as outlined in KRS 260 may apply for a certificate of exempt status with the Department by submitting an Application for Exemption, available from the Department.

(2) One of the following requirements must be met for a Certificate of Exemption:

(a) The farm ONLY grows produce that is rarely consumed raw, specifically the produce on the following exhaustive list: asparagus, black beans, great Northern beans, kidney beans, lima beans, navy beans, pinto beans, beets, garden (roots and tops) beets, sugar beets, cashews, sour cherries, chickpeas, cocoa beans, coffee beans, collards, sweet corn, cranberries, dates, dill (seeds and weed), eggplants, figs, ginger, hazelnuts, horseradish, lentils, okra, peanuts, pecans, peppermint, potatoes, pumpkins, mature southern field peas (such as black-eyed peas, cowpeas, crowder peas, purple hull peas, sea island peas, silver peas, and speckled peas), winter squash, sweet potatoes, and

water chestnuts as outlined in 21 C.F.R. Part 112.2;

(b) Produce grown is used only for personal consumption or produced for consumption on the farm as outlined in 21 C.F.R. Part 112.2;

(c) Produce grown receives commercial processing that adequately reduces the presence of microorganisms of public health significance as outlined in 21 C.F.R. Part 112.2; or

(d) During the previous 3-year period a farmer's average of all produce sales was \$25,000 or less (on a rolling basis) adjusted for inflation using 2011 as the baseline year for calculating the adjustment as outlined in 21 C.F.R. Part 112.4.

(3) Upon the Department's review of the Application for Exemption, a farm verified as having met the requirements for exemption status shall be issued a Certificate of Exemption.

(4) A Certificate of Exemption shall be non-transferrable.

(5) A Certificate of Exemption shall only be issued:

- (a) In the name of the applicant; and
- (b) For the FSA location or locations identified in the application.

(6) Unless otherwise withdrawn, the Certificate of Exemption shall be valid for as long as the farm remains in exempt status.

(7) All exempt farms shall be required to complete a yearly evaluation of exemption status. Once a farm's exempt status changes to covered status, the farmer shall immediately notify the Department.

Section 6. Inspection Frequency, Notices, Records. (1) Risk prioritization. The Department shall assign a risk prioritization level to each farm based on the following factors:

- (a) Commodities handled,
- (b) Farm acreage,
- (c) Annual produce sales,
- (d) Farmer attendance at a Produce Safety Alliance or FDA-approved grower training,
- (e) Compliance history,
- (f) Participation in an on-farm readiness review,
- (g) Agricultural water source,
- (h) Presence of a farm food safety plan,
- (i) GAP certification or recent participation in other food safety programs,

- (j) Adjacent land use,
- (k) Likelihood of wildlife or animal intrusion, and
- (l) Geographical location of the farm.

(2) Priority designation. Inspection frequencies shall be assigned as follows:

- (a) Priority 1 farms shall receive a minimum of one (1) inspection per year.
- (b) Priority 2 farms shall receive a minimum of one (1) inspection every two years.
- (c) Priority 3 farms shall receive a minimum of one (1) inspection every three years.

(3) Regardless of a farm's priority designation, the Department shall make as many additional inspections and re-inspections as are necessary for the enforcement of this administrative regulation.

(4) Inspection records. The Department representative inspecting a covered farm shall record the findings on the Produce Farm Inspection Observations Report, and shall provide a copy of the inspection report to the farmer.

(5) Issuances of notices. If an inspection reveals a violation of this administrative regulation, the Department shall notify the farmer. In the notification, the Department shall establish:

- (a) The specific violations found; and
- (b) A specific and reasonable period of time for the correction of the violations found pursuant to this paragraph. The report of inspection shall state:

1. Failure to comply with a notice from the Department, or with a time limit for correction of a violation, shall result in regulatory action up to and including civil penalties, as provided in KRS 260, and

2. An opportunity for appeal from an adverse notice or inspection finding shall be provided if a written request is filed with the Department within ten (10) days following service of notice.

(6) Service of notice. A notice provided for under this section

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shall be properly served if a copy of the Produce Farm Inspection Observations Report or other notice has been delivered personally to the farmer, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of farmer.

Section 7. Violations and Corrective Action Plans. (1) If a farm has committed a violation of 21 C.F.R. Part 112, KRS 260 or this administrative regulation, an opportunity to correct the violation shall be provided in accordance with the following classifications:

(a) NAI - No changes in the inspection frequency are warranted under this classification;

(b) VAI - A follow-up inspection is warranted within a period of time not to exceed the date of the next routine inspection to determine if the violation causing this classification has been corrected; or

(c) OAI - A follow-up inspection shall be conducted within a period of time not to exceed thirty (30) days to determine if the violation causing the classification has been corrected. A farm may also be classified as OAI if it continually fails to correct a violation previously classified under a VAI designation or if an egregious violation is noted during an inspection.

(2) Upon completion of the inspection, a recommended classification of NAI, VAI, or OAI and the timeframe for correction of the violation shall be specified on the Produce Farm Inspection Observations Report.

(3) A farm that receives an inspection classification of VAI or OAI shall submit a plan of corrective action to the Department as follows:

(a) VAI: Within thirty (30) days following the inspection.

(b) OAI: Within ten (10) days following the inspection.

(4) Failure to submit a plan of corrective action to the Department within the specified time frame may result in the initiation of enforcement provisions pursuant to KRS 260 and Section 10 of this administrative regulation.

(5) If, during the next inspection, the violation noted on the previous inspection has not been corrected within the timeframe specified by the Department, the Department may:

(a) Extend the timeframe for corrective action if the Department determines that progress towards compliance has been made;

(b) Issue a warning letter;

(c) Initiate enforcement provisions pursuant to Sections 8 and 10 of this administrative regulation; or

(d) Initiate enforcement provisions pursuant to KRS 260.

Section 8. Stop Use. (1) Whenever a duly authorized agent of the Department finds, or has probable cause to believe, that a covered activity or the continued use of a utensil, piece of equipment or machinery, water distribution device, or room or area used for the production, handling or storage of covered produce may result in adulterated product, the Department shall issue a Stop Use Order to the farmer.

(a) The reason for the Stop Use Order shall be documented on the Notice to Stop Use.

(b) The Notice to Stop Use shall notify all persons to discontinue a covered activity or use of a utensil, piece of equipment or machinery, water distribution device, or room or area used for the production, handling or storage of covered produce until conditions causing the Stop Use Order have been corrected and permission for use is given by a duly authorized agent of the Department.

(2) It shall be unlawful for any person to utilize a piece of equipment, room or area used for the production, handling or storage of covered produce for which a Stop Use Order has been issued without such permission.

(3) If the Department has evidence that a farmer has violated the provisions contained in this section, enforcement provisions may be initiated pursuant to KRS 260 and Section 10 of this administrative regulation.

Section 9. Egregious Conditions, Examination and Detention of Foods. (1) The Department shall have the authority to examine and collect water, produce, and environmental samples as often

as necessary for the enforcement of this administrative regulation.

(2) A farmer shall take immediate steps to correct any egregious condition.

(3) Whenever a duly authorized agent of the Department finds or has probable cause to believe that covered produce in any growing, harvesting, packing, or holding area has been subject to conditions whereby it may have become contaminated with filth or microorganisms of public health significance, or whereby it may have been rendered injurious to health within the meaning of KRS 260 the Department shall issue a Stop Movement Order to the farmer.

(a) The reason for the order shall be documented on the Stop Movement Order.

(b) The Stop Movement Order shall give notice that such produce is, or is suspected of, being contaminated or injurious to health and notifying all persons not to remove or dispose of such article by sale or otherwise until permission for removal, disposal, or diversion is given by such agent or the court.

(4) The Department shall issue a Notice of Voluntary Destruction to a farmer who elects to voluntarily destroy covered produce for which a Stop Movement Order has been issued.

(5) Provided that covered produce for which a Stop Movement Order has been issued can be safely diverted by the farmer for alternative uses that do not pose a risk to human or animal health, the Department may issue a Notice of Diversion/Change Order to the farmer.

(6) In all other instances, the Department shall follow the provisions set forth in KRS 260 regarding the disposition of produce for which a Stop Movement Order was issued.

(7) If the Department has evidence that a farmer has failed to act to correct an egregious condition, enforcement provisions may be initiated pursuant to KRS 260 and Section 10 of this administrative regulation.

Section 10. Enforcement Provisions. (1) If the Department has substantial reason to believe that a covered farm has failed to act to correct an egregious condition; if a farm owner, operator, or agent in charge has interfered with the Department in the performance of its duties after its agents have duly and officially identified themselves; or if a farm has failed to comply with an OAI inspection notice within the timeframe granted, the Department shall:

(a) Issue a stop work order for that portion or portions of the covered farm affected by the egregious condition;

(b) Issue a stop movement order; or

(c) seek civil or criminal penalties under KRS 260.

(2) In all other instances of violation of this administrative regulation, the Department shall serve the registered farm with a written notice specifying the violation and afford the holder of the registration an opportunity to correct.

(3) Notices provided for under this administrative regulation shall be deemed to have been properly served if:

(a) A copy of the inspection report or other notice has been delivered personally to the registration holder or the farm person-in-charge, or

(b) The notice has been sent by registered or certified mail, return receipt.

(4) Failure to comply with any provision of this administrative regulation, 21 C.F.R. Part 112, or KRS 260 may result in civil penalties pursuant to KRS 260.

Section 11. Appeals. All appeals of KDA determinations shall be done in accordance with KRS 13B.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Informational Survey", 06/2020;

(b) "Application for Qualified Exemption", 06/2020;

(c) "Produce Farm Inspection Observations", 06/2020;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: June 13, 2020

FILED WITH LRC: June 15, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 August 31, 2020. 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes produce safety standards and inspectional standards for produce growers based on FDA's Produce Safety Rule.

(b) The necessity of this administrative regulation: This regulation establishes produce safety and inspectional standards for produce growers based on FDA's Produce Safety Rule.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260 provides the statutory authority for the KDA to establish administrative regulations for a produce safety program. This administrative regulation establishes produce safety standards and inspectional standards for produce growers based on FDA's Produce Safety Rule.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by establishing produce safety standards and inspectional standards for Kentucky produce growers.

(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: No amendment.

(b) The necessity of the amendment to this administrative regulation: No amendment.

(c) How the amendment conforms to the content of the authorizing statutes: No amendment.

(d) How the amendment will assist in the effective administration of the statutes: No amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and produce growers in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Little to no additional costs would be incurred beyond those already incurred under the Federal Produce Safety Rule.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for regulated entities.

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

(a) Initially: No costs are associated with this filing.

(b) On a continuing basis: No costs are associated with this filing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Program staff, education and outreach activities, and regulatory inspections are 100% funded under an FDA Produce Safety Cooperative Agreement Program Grant. The grant is renewable every 5 years. Currently, there is no expectation that funds will be exhausted. Under KRS 260, the program will cease if funding is exhausted.

(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 costs are associated with this filing, as the program is entirely federally funded.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No costs are associated with this filing.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260 and 21 C.F.R. Part 112.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No income will be generated by this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No income will be generated by this filing.

(c) How much will it cost to administer this program for the first year? All costs to administer this program are fully funded by the FDA through a Produce Safety Cooperative Agreement Program Grant. 2019 program costs were approximately 1,000,000 for Produce Safety Program staff, materials, and flow through grant funding to UK.

(d) How much will it cost to administer this program for subsequent years? All costs to administer this program are fully funded by the FDA through a Produce Safety Cooperative Agreement Program Grant. The KDA expects this spending trendline to continue for the Produce Safety Program as a whole.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)

702 KAR 1:180. School security risk assessment tool.

RELATES TO: KRS 156.160, 158.4410, 158.4412, 158.442, 158.443, 158.444

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STATUTORY AUTHORITY: KRS 156.029, 156.070, 156.160, 158.442, 158.443, 158.444

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) states that the primary function of the Kentucky Board of Education (KBE) is to adopt administrative regulations governing “the educational programs, services, and activities” within the KBE’s jurisdiction that the Kentucky Department of Education (department) administers and operates, and KRS 156.160 requires the KBE “promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance.” In accordance with KRS 158.442, which establishes the Center for School Safety (KCSS), the KCSS is required to “advise the Kentucky Board of Education on administrative policies and administrative regulations relating to school safety and security.” Further, KRS 158.443(9)(b) requires the board of directors for the KCSS “approve a school security risk assessment tool and updates as necessary in accordance with KRS 158.4410 to be incorporated by reference within an administrative regulation promulgated in accordance with KRS Chapter 13A.” KRS 158.444 requires the Kentucky Board of Education promulgate administrative regulations related to school safety, student discipline and related matters. Accordingly, this administrative regulation incorporates by reference the school security risk assessment tool approved by the KCSS board of directors.

Section 1. Incorporation by Reference. (1) As required by KRS 158.4410, each local district superintendent shall annually verify all schools within the district have completed the Internal School Security Risk Assessment Tool approved by the KCSS board of directors and incorporated by reference within this administrative regulation pursuant to KRS 158.443.

(2) The following material is incorporated by reference: “Internal School Security Risk Assessment Tool,” June 2020.

(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

KEVIN C. BROWN, Interim Commissioner
LU YOUNG, Chairperson

APPROVED BY AGENCY: June 10, 2020

FILED WITH LRC: June 10, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 25, 2020, at 10 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2020.

CONTACT PERSON: Todd G. Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new regulation complies with KRS 158.443, which requires the board

of directors for the Center for School Safety (KCSS) “approve a school security risk assessment tool and updates as necessary in accordance with KRS 158.4410 to be incorporated by reference within an administrative regulation promulgated in accordance with KRS Chapter 13A.”

(b) The necessity of this administrative regulation: During the 2019 Regular Session of the Kentucky General Assembly, the legislature adopted Senate Bill 1, which became effective on March 11, 2019, revising KRS 158.443 to require the board of directors for the KCSS “approve a school security risk assessment tool and updates as necessary in accordance with KRS 158.4410 to be incorporated by reference within an administrative regulation promulgated in accordance with KRS Chapter 13A.”

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education (KBE) in KRS 156.160 requiring the KBE “promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance” and is in accordance with KRS 158.442, which establishes the KCSS and requires the KCSS “advise the Kentucky Board of Education on administrative policies and administrative regulations relating to school safety and security.” This new regulation also complies with KRS 158.443, which requires the KCSS board of directors “approve a school security risk assessment tool and updates as necessary in accordance with KRS 158.4410 to be incorporated by reference within an administrative regulation promulgated in accordance with KRS Chapter 13A.”

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation incorporates by reference the school security risk assessment tool that each local district superintendent shall annually verify all schools within the district have completed pursuant to KRS 158.4410.

(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 statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The KCSS, local education agencies, the KBE, and the Kentucky Department of Education (KDE) will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation fulfills the requirement in KRS 158.443 for the KCSS board of directors to “approve a school security risk assessment tool and updates as necessary in accordance with KRS 158.4410 to be incorporated by reference within an administrative regulation promulgated in accordance with KRS Chapter 13A.” The KCSS is also required, in accordance with KRS 158.442, to “advise the Kentucky Board of Education on administrative policies and administrative regulations relating to school safety and security.” On behalf of each local education agency, the local school district superintendent shall annually verify, as required by KRS 158.4410, all schools within the district have completed the risk assessment tool incorporated by reference within this administrative regulation, which was also approved by the KCSS board of directors. In addition to incorporating by reference in this regulation the school security risk assessment tool approved by the KCSS board of directors, the KBE and the KDE will receive annual verification from each local school district superintendent

regarding completion of the school security risk assessment tool as required by KRS 158.4410.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The requirements for the KCSS, local education agencies, the KBE, and the KDE related to the school security risk assessment tool are all codified in the following Kentucky Revised Statutes: 158.4410, 158.4412, 158.442, and 158.443. Because this administrative regulation only incorporates by reference the school security risk assessment tool in fulfillment of KRS 158.443, there is no anticipated budget impact related to this administrative regulation for the KCSS, local education agencies, the KBE, or KDE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The KCSS, local education agencies, the KBE, and the KDE benefit from this regulation fulfilling the requirements in KRS 158.443 for the KCSS board of directors to “approve a school security risk assessment tool and updates as necessary in accordance with KRS 158.4410 to be incorporated by reference within an administrative regulation promulgated in accordance with KRS Chapter 13A.”

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

(a) Initially: The requirements related to the school security risk assessment tool are all codified in the following Kentucky Revised Statutes: 158.4410, 158.4412, 158.442, and 158.443. Because this administrative regulation only incorporates by reference the school security risk assessment tool in fulfillment of KRS 158.443, initial costs related to implementation of this administrative regulation are not anticipated.

(b) On a continuing basis: The requirements related to the school security risk assessment tool are all codified in the following Kentucky Revised Statutes: 158.4410, 158.4412, 158.442, and 158.443. Because this administrative regulation only incorporates by reference the school security risk assessment tool in fulfillment of KRS 158.443, continuing costs related to implementation of this administrative regulation are not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The requirements related to the school security risk assessment tool are all codified in the following Kentucky Revised Statutes: 158.4410, 158.4412, 158.442, and 158.443. Because this administrative regulation only incorporates by reference the school security risk assessment tool in fulfillment of KRS 158.443, costs for the implementation and enforcement of this administrative regulation are not anticipated.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not anticipated to 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 regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to the KCSS, local education agencies, the KBE, and the KDE.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Center for School Safety (KCSS), local education agencies, the Kentucky Board of Education (KBE), and the Kentucky Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029, 156.070, 156.160, 158.442, and 158.443

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The requirements for the KCSS, local education agencies, the KBE, and the KDE related to the school security risk assessment tool are all codified in the following Kentucky Revised Statutes: 158.4410, 158.4412, 158.442, and 158.443. Because this administrative regulation only incorporates by reference the school security risk assessment tool in fulfillment of KRS 158.443, there is no anticipated effect on the expenditures and revenues of any state or local government agency for the first full year the administrative regulation is effective.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The requirements related to the school security risk assessment tool are all codified in the following Kentucky Revised Statutes: 158.4410, 158.4412, 158.442, and 158.443. Because this administrative regulation only incorporates by reference the school security risk assessment tool in fulfillment of KRS 158.443, costs to administer this program for the first year are not anticipated.

(d) How much will it cost to administer this program for subsequent years? The requirements related to the school security risk assessment tool are all codified in the following Kentucky Revised Statutes: 158.4410, 158.4412, 158.442, and 158.443. Because this administrative regulation only incorporates by reference the school security risk assessment tool in fulfillment of KRS 158.443, costs to administer this program in subsequent years are not anticipated.

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

Revenues (+/-): N/A
Expenditures (+/-): NA
Other Explanation: N/A

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)**

902 KAR 45:180. Permits and fees for food manufacturing plants, food storage warehouses, salvage processors and distributors, cosmetic manufacturers, and certificate of free sale.

RELATES TO: KRS 217.015, 217.025, 217.035, 217.037, 217.085, 217.095, 217.155

STATUTORY AUTHORITY: KRS 217.125(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) requires 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 217.125(2) requires the secretary to provide by administrative regulation a schedule of reasonable fees to be paid by food manufacturing plants, food storage warehouses, salvage distributors, salvage processing plants, and cosmetic manufacturers for permits to operate and for inspection activities carried out by the cabinet. This administrative regulation establishes the schedule of fees.

Section 1. Fees. (1) A permit fee shall be required for inspections conducted by the cabinet or the local health department to determine compliance with:

(a) 902 KAR 45:080 for a salvage distributor or a salvage processing plant;

(b) KRS 217.025, 217.035, and 217.037 for a food

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manufacturing plant or food storage warehouse; or

(c) KRS 217.085 and 217.095 for a cosmetic manufacturer.

(2) A fee for the inspection of a food manufacturing plant or food storage warehouse shall be assessed according to the highest risk level of commodity manufactured:

(a) High risk plant - \$2,400;

(b) Medium risk plant - \$1,350; or

(c) Low risk plant - \$750.

(3) A fee for the inspection of a cosmetic manufacturer shall be \$300.

(4) A request for a certificate of free sale or export authorizing a Kentucky food manufacturing plant holding a valid permit to operate to export a product outside of the United States shall be accompanied by a service fee of fifty (50) dollars for each certificate requested.

Section 2. Payment of Fees. Fees shall be made payable to the Kentucky State Treasurer and forwarded to the Kentucky Department for Public Health, Food Safety Branch, 275 East Main Street, Frankfort, KY 40621.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 4, 2020

FILED WITH LRC: June 4, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 24, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2020. 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; phone 502-564-6746; fax 502-564-7091; email CHFRegs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the amount of the fees paid by food manufacturing plants, food storage warehouses, cosmetic manufacturers, salvage processors and distributors, and requests for certificates for free sale.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the fee structure to help support the department costs for permitting and inspecting food manufacturing plants, food storage warehouses, cosmetic manufacturers, salvage distributors, salvage processing plants, and for issuing certificates of free sale.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217.125 authorizes the secretary to promulgate regulations to establish a fee schedule for food processing establishments, food storage warehouses, salvage distributors, and salvage processing plants. KRS 217.155 authorizes the cabinet or its agents to inspect any factory, warehouse, or establishment in which cosmetics are

manufactured. This regulation outlines the schedule of fees to be paid for permit and inspection.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with addressing the cost to administer food and cosmetic permitting and inspection programs.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 536 food manufacturers and seventy-seven (77) cosmetic manufacturers registered with 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 questions (3) will have to take to comply with this administrative regulation or amendment: All permitted food manufacturing plants, storage warehouses and service establishments, including retail food stores, will pay a fee based on the identified risk category level associated with the type of food being manufactured, stored, or prepared and served by the establishment. Cosmetic manufacturers are required to manufacture products in a commercial kitchen and the Food Safety Branch staff are responsible for inspecting all commercial kitchens.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The current fee structure for food manufacturing is based on the square footage for the facility and ranges from \$120 to \$600. This administrative regulation changes the fee structure to be based on the risk of the food manufactured. A low risk food manufacturer will be assessed a \$750 fee while a high risk food manufacturer will be assessed \$2,400. Cosmetic manufacturers will now be required to pay a \$300 fee for inspection.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All food manufacturing plants, and cosmetic manufacturers are required to be inspected and permitted by the cabinet. The fees paid for inspection and permitting help to ensure food manufacturing plants, and cosmetic manufacturers are in compliance with federal and state laws. Food manufacturing plants with a higher risk category level will be inspected at a higher frequency as they have the greatest food safety risk.

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

(a) Initially: There are no additional costs initially.

(b) On a continuing basis: There are no 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: Agency funds and revenue received from permitting and inspection fees continue to be used 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: This administrative regulation does increase the fees paid by food manufacturing plants, and institutes a new fee for cosmetic manufacturers. There is no increase in funding necessary for this regulation.

(8) State whether or not this administrative regulation

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established any fees or directly or indirectly increased any fees. This administrative regulation establishes the fees associated with operating a food manufacturing plant or storage facility, a cosmetic manufacturer, and for the issuance of a certificate for free sale. The administrative cost to the cabinet is approximately \$150 per hour for inspectors. This cost includes the salary of the inspector, fiscal year 2018 Kentucky Employee Retirement System (KERS) and Federal Insurance Contributions Act (FICA) contributions, and health and life insurance cost.

The risk level of a food manufacturing plant or food storage facility has an impact on the length of time required to conduct an inspection as well as the number of inspections completed per year. The table below outlines the risk level of the food manufacturing facility, the hours per inspection, the number of firms inspected each year, and the proposed fee.

	Risk Level 1 – Plants engaged in international, interstate, statewide or regional disposition of time/temperature controlled, processed ready-to-eat specialized process
Avg. Hourly Rate*	\$150
Inspection hours	55
Inspections per year	211 firms per year
Proposed fee	\$2400
Actual Expenditure	\$8250 for inspection hours; \$1,740,750 to inspect all plants in this category

	Risk Level 2 – Plants that process food products that are ready-to-eat or potentially hazardous but not both
Avg. Hourly Rate*	\$150
Inspection hours	9
Inspections per year	176 firms per year
Proposed fee	\$1350
Actual Expenditure	\$1350 for inspection hours; \$237,600 to inspect all plants in this category

	Risk Level 3 – Grain elevators, milling and malting plants, coffee and tea plants, food warehouses
Avg. Hourly Rate*	\$150
Inspection hours	5
Inspections per year	149 firms per year
Proposed fee	\$750
Actual Expenditure	\$750 for inspection hours; \$111,750 to inspect all plants in this category

Cosmetic manufacturers are currently subject to inspection but are not assessed a fee for permitting and inspection activities. This administrative regulation adds a fee of \$300 for the permitting and inspection activities of the cabinet.

(9) TIERING: Is tiering applied? Tiering is applied. The fee structure for food manufacturing plants and storage warehouses is based on the risk level of the foods produced or stored.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment impacts the Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, and all local health departments.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 217.125 and KRS 217.811.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The change in fee structure will generate an estimated \$879,970 from food manufacturing plants and storage warehouses, and \$190,000 from all other regulated entities in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The change in fee structure will continue to generate an estimated \$879,970 from food manufacturing plants and storage warehouses, and \$190,000 from all other regulated entities in subsequent years.

(c) How much will it cost to administer this program for the first year? The current cost to administer all programs under the Food Safety Branch within the Division of Public Health Protection and Safety is \$5,524,622.00. There is no anticipated increase in costs to administer permitting and inspection of food manufacturing plants, food storage warehouses, food service establishments, retail food stores, cosmetic manufacturers, and vending machine companies this first year.

(d) How much will it cost to administer this program for subsequent years? There will be no change in program cost.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 9, 2020

Call to Order and Roll Call

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 9, 2020 at 1:00 p.m. In Room 171 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes from the May 2020 meeting were approved.

Present were:

Members: Senators Julie Raque Adams, Alice Forgy Kerr, Reginald Thomas and Stephen West. Representatives David Hale, Deanna Frazier Marylou Marzian, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Klaber, and Christy Young.

Guests: Johanna Ballinger, Mike Nickles, Michael Wilson, Secretary of State; Larry Hadley, Anthony Grey, Board of Pharmacy; Jeff Allen, Board of Dentistry, Morgan Ransdall, Board of Nursing; Chuck O'Neal, Jeffrey Walther, John Wood, Board of Emergency Medical Services; Clint Quarles, Department of Agriculture; Amy Cabbage, Kimberlee Perry, Chuck Stribling, Robin Maples, Kristi Lowry, Labor Cabinet; Kate Shanks; Mark Guifoil, Jamie Eads, Jennifer Wolsing, Bob Brady, Kentucky Harness Association, Joe Costa, Red Mile; Ken Jackson, Kentuckiana Farms; Mike Ziegler, Churchill Downs; Jim Avritt, Jr., Mike Meusser, Kentucky Harness Horseman's Association; Bruce Howard; Laura Begin, Elizabeth Caywood, Kara Daniel, Wesley Duke, Jason Dunn, Adam Mather, Wendy Morris, Kelli Rodman, Misty Sammons, Jonathan Scott, Donna Little, Cabinet for Health and Family Services; Wade Stone, Med Health Center; Mike Sherrod, Tristar Greenview Hospital; Erich Blackburn, Pikeville Medial Center; Janet Craig, Stites and Harbison; Betsy Johnson, Association of Health Care Facilities/ Centers for Assisted Living; Heidi Schissler Lanham; Department of Protection and Advocacy.

The Administrative Regulation Review Subcommittee met on Tuesday, June 9, 2020, and submits this report:

The subcommittee determined that the following administrative regulation was deficient pursuant to KRS 13A.030(2)(a):

LABOR CABINET: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training

803 KAR 2:180. Recordkeeping, reporting, statistics. Amy Cabbage, general counsel; Kimberlee Perry, commissioner; and Chuck Stribling, occupational safety and health federal – state coordinator, represented the division. Kate Shanks, vice president, Kentucky Chamber of Commerce, appeared in opposition to this administrative regulation.

In response to questions by Senator Raque Adams, Ms. Perry stated that 803 KAR 2:180 was more stringent than federal requirements. Kentucky was a State Plan State, which required Kentucky to be at least as effective, or more protective, than federal OSHA requirements. This administrative regulation required an employer to report an incident that resulted in an employee hospitalization, including hospital admission for diagnostics or observation. The division needed this data for statistical and tracking purposes to determine trends. These trends were not statutorily required to be monitored, and a statistical survey service tracked these trends. Hospitalization tracking had been in place since 2006. The new requirements included hospital admission for diagnostics or observation. Senator Raque Adams stated that it might be advisable to work further with stakeholders on this issue.

Co-Chair West stated that prior to this amendment, employers were required to report employee hospitalizations related to work. The employer decided which incidents were work related. The amendment reversed that system, so that the division would determine which incidents were work related, not the employer. In response to questions by Co-Chair West, Ms. Perry stated that all incidents were now reportable to the division. A report would not necessarily cause an inspection to be performed. There had been incidents under the 2006 reporting system. An employer, for example, reported that an employee had experienced a fatal heart attack at work. Later, it was determined that the employee had not had a heart attack, but seemed to have died from a work-related incident. Ms. Cabbage stated that no public hearing was requested but that the division had received written public comments. Co-Chair West stated that more time for public input seemed prudent.

In response to a question by Co-Chair Hale, Ms. Shanks stated that the Kentucky Chamber of Commerce was opposed to this administrative regulation because this administrative regulation was more stringent than the federal requirements and the reason for the increased stringency was unclear. Additional training for employers regarding these changes would be necessary; therefore, the chamber requested more time for this conversation.

In response to questions by Representative Marzian, Ms. Shanks stated that the Kentucky Chamber of Commerce commented during public comment period, along with Greater Louisville Incorporated, Northern Kentucky Chamber of Commerce, and Commerce Lex. The division filed a Statement of Consideration in response to public comments but did not further amend this administrative regulation in response to public comments.

In response to a question by Co-Chair West, Mr. Stribling stated that an employer's requirement to report an employee's hospital admission for diagnostics or observation was added because sometimes a formal hospitalization would continue as a response to diagnostics or observation and there was currently no reporting requirement for that situation. The division might miss statistics that would point to trends that needed to be addressed for employee safety. A report did not automatically result in an inspection being performed. Most employers reported out of an abundance of caution. Last year, the division inspected approximately forty-four (44) percent of facilities in response to a report. The data was necessary to track incidents, trends, and division response rates. A consultant, rather than a compliance officer, would be involved in the response to a report.

In response to a question by Senator Raque Adams, Mr. Stribling stated that there was a potential for a fine for an employer that did not report an incident. Failure to report an incident was usually determined by an employee filing a complaint.

In response to questions by Co-Chair West, Ms. Perry stated that the division respectfully declined to defer consideration of this administrative regulation to the July subcommittee meeting. Mr. Stribling stated that Section 2 of this administrative regulation included federal requirements that applied to several other administrative regulations in this package, which had to become effective within six (6) months. The federal deadline, which had already passed, made deferral difficult for the division. The previous administration did not wish to go forward with this administrative regulation until after the 2019 election; therefore, this change had been postponed and had missed the federal deadline.

In response to a question by Representative Frazier, Ms. Perry stated that the division respectfully declined to defer consideration of this administrative regulation, even if the deferral is for this administrative regulation only and separate from the other administrative regulations in this package, to the July subcommittee meeting.

In response to a question by Representative Marzian, Mr. Stribling stated that, after this subcommittee meeting, this

administrative regulation would proceed on to the subject matter committee.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Co-Chair West made a motion, seconded by Senator Raque Adams to find this administrative regulation deficient. Co-Chair West withdrew the motion for clarification. Co-Chair West made a clarified motion, seconded by Senator Raque Adams to find 803 KAR 2:180, as amended, deficient, while allowing the other administrative regulations in this package to continue through the process. A roll call vote was conducted, and with five (5) votes to find the administrative regulation deficient and three (3) votes against deficiency, this administrative regulation, as amended, was found deficient.

Senator Thomas explained his no vote. He stated that there seemed to be a discrepancy regarding the public comment period. Commerce Lex had not brought this concern to his attention, although they had been in close contact with him recently.

Representative Marzian explained her no vote. She stated that she agreed with the comments by Senator Thomas. Additionally, this was a very tepid worker-protection requirement that was needed for employee safety.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 4 was added to this administrative regulation to reflect the finding of deficiency.

Administrative Regulations Reviewed by the Subcommittee:

SECRETARY OF STATE: Notary Public

30 KAR 8:005 & E. Notary Public applications and electronic and online registrations. Mike Wilson, director of business services and deputy general counsel, represented the Secretary of State.

In response to a question by Co-Chair Hale, Mr. Wilson stated that this administrative regulation implemented changes commensurate with Senate Bill 114 from the 2019 Regular Session of the General Assembly. Social distancing requirements related to coronavirus (Covid 19) further necessitated this administrative regulation, which provided for remote and electronic notarization.

In response to questions by Co-Chair West, Mr. Wilson stated that "electronic notarization" meant notarizations for electronic records, while "remote on-line notarization" was a more general category, which included notarizations performed for a remotely located individual. These two (2) distinct categories were clarified by this administrative regulation. The authorizing statute did have ambiguities regarding this matter that might be clarified through future legislation.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:175. Emergency/Seventy-two (72) hour prescription refills. Anthony Gray, general counsel, and Larry Hadley, executive director, 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 and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:230. Special limited pharmacy permit – Central Fill.

A motion was made and seconded to approve the following

amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Dentistry

201 KAR 8:550. Anesthesia and sedation. Jeff Allen, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

In response to a question by Co-Chair Hale, Mr. Allen stated that 201 KAR 8:550 was being amended in response to a sunset review and updates to the Americans with Disabilities Act. 201 KAR 8:590 was a new administrative regulation to implement teledentistry.

201 KAR 8:590. Teledentistry.

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 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 20:057 Scope and standards of practice of advanced practice registered nurses. Morgan Ransdell, general counsel, represented the board.

In response to a question by Co-Chair Hale, Mr. Ransdell stated that the most substantive changes in this package of administrative regulations were the amendments to 201 KAR 20:057. This administrative regulation established provisions related to self-prescribing controlled substances and prescribing of controlled substances to family members.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for "immediate family"; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4 through 7, 9, 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 20:162. Disciplinary proceedings.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to allow video recording in lieu of transcription by a court stenographer; (2) to amend Section 7 to delete provisions for financial hardship waiver of hearing costs; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 5 through 7, 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 20:230. Renewal of licenses.

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.

201 KAR 20:370. Applications for licensure.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were

approved.

201 KAR 20:410. Expungement of records.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services

202 KAR 7:555. Ground agencies. Chuck O'Neil, deputy executive director, and John Wood, counsel, represented the board.

DEPARTMENT OF AGRICULTURE: Office of the Consumer and Environmental Protection: Egg Marketing

302 KAR 10:011. Repeal of 302 KAR 010:010, 302 KAR 010:020, 302 KAR 010:030, 302 KAR 010:040, 302 KAR 010:050, 302 KAR 010:060, 302 KAR 010:070, 302 KAR 010:080, and 302 KAR 010:090. Clint Quarles, counsel, represented the department.

In response to a question by Co-Chair West, Mr. Quarles stated that the requirements for egg handling in 302 KAR Chapter 10 did not apply to small-scale egg producers.

302 KAR 10:015. Egg grading and classification.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 10:025. License application, refusal, revocation, suspension, and appeals.

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 2 through 7; and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 10:100. Refrigeration of eggs and temperature requirements.

Office of the State Veterinarian: Livestock, Poultry, and Fish

302 KAR 22:050. Stockyards.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 4, 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training

803 KAR 2:300. General. Amy Cabbage, general counsel; Kimberlee Perry, commissioner; and Chuck Stribling, occupational safety and health federal – state coordinator, represented the division.

803 KAR 2:320. Toxic and hazardous substances.

803 KAR 2:400. Adoption of 29 C.F.R. Part 1926 Subpart A.

803 KAR 2:403. Occupational health and environmental controls.

803 KAR 2:404. Personal protective and lifesaving equipment.

803 KAR 2:406. Signs, signals, and barricades.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:407. Materials handling, storage, use and disposal.

803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:422. Rollover protective structures; overhead protection.

803 KAR 2:425. Toxic and hazardous substances.

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.

803 KAR 2:500. Maritime employment.

PUBLIC PROTECTION CABINET: Horse Racing Commission: Thoroughbred Racing

810 KAR 1:001. Definitions. Marc Guilfoil, executive director; Ken Jackson, owner, Kentuckiana Farms, and commission member; and Jennifer Wolsing, general counsel, represented the Horse Racing Commission. Bob Brady, Kentucky Harness Association, and Joe Costa, president and CEO, Red Mile, appeared in support of this package of administrative regulations. Jim Avritt, Jr., member, board of directors, Kentucky Harness Horsemen's Association, and Mike Meusser, attorney for the Kentucky Harness Horsemen's Association, appeared in opposition to 810 KAR 5:060, 810 KAR 5:070, 810 KAR 7:040, and 811 KAR 1:250.

In response to a question by Co-Chair West, Ms. Wolsing stated that 810 KAR 5:070, 810 KAR 7:040, and 811 KAR 1:250 established a new Kentucky Harness Association (KHA), as authorized by KRS 230.215. These three (3) administrative regulations passed the Horse Racing Commission in an eight (8) to zero vote. The new KHA would serve on the Sire Stakes Panel and would have authority to enter into contracts with racing associations in Kentucky. The goal of this package of administrative regulation was for consistency among administrative regulations within the commission in order to foster improvements to the standardbred industry. The thoroughbred industry in Kentucky had two (2) horsemen's groups. Having more than one (1) association achieved two (2) goals, including preventing a monopoly and giving the Horse Racing Commission options regarding with whom to contract. Neither thoroughbred association had been left out of the process. Other major racing jurisdictions in the US, including New York and Pennsylvania, had multiple associations. The commission's goal was for the standardbred industry to come to the same level of competency, cooperation, and diligence as was found in the thoroughbred industry, by representing a diverse array of interests.

In response to questions by Co-Chair Hale, Mr. Jackson stated that it was time for change in Kentucky regarding the standardbred industry. Three (3) racetracks: Thunder Ridge, Player's Bluegrass Downs, and Louisville Downs, had failed in this state during the last thirty (30) years. Thunder Ridge and Player's Bluegrass Downs both closed within the last four (4) years. These facilities closed due to lack of a viable product for fans. The purpose of the new KHA was to bring together the many components needed to support and advance the

standardbred industry in Kentucky.

In response to questions by Representative Frazier, Mr. Jackson stated that the new KHA was formed in November 2019. There were three (3) original members, but more members were expected. The new KHA was developed methodically. Mr. Avritt stated that Mr. Jackson was the horsemen's representative to the commission during the discussion of the new KHA. He had a conflict of interest and did not abstain from voting on this matter.

In response to questions by Co-Chair Hale, Ms. Wolsing stated that New York and Pennsylvania both had multiple standardbred horsemen's representatives groups. Mr. Guilfoil stated that New York had four (4) and Pennsylvania had two (2). Mr. Jackson stated that Ontario had more than one (1) association.

In response to a question by Co-Chair Hale, Mr. Avritt stated that, as a breeder, owner, racer, and trainer, he was opposed to establishing a second standardbred horsemen's association. In addition, he was a member of the board of directors for the existing KHHA. There were concerns regarding nepotism because Mr. Jackson was on the Horse Racing Commission and Mr. Jackson's brother-in-law, Bob Brady, was also involved in the new KHA. Mr. Jackson and his brother-in-law were also stakeholders in other horse businesses. The new KHA would establish contracts with these very entities. This was an obvious conflict of interest and a threat to members of the new association. The current association worked well to fulfill Kentucky's standardbred needs. New York and Pennsylvania did have multiple standardbred horsemen's associations; however, none competed against each other at the same tracks. The commission's Statement of Consideration stated that the new association could be used to take advantage of the members. The thoroughbred industry in Kentucky only had two (2) associations because, in the 1980s, Churchill Downs was having difficulty and decided to form its own negotiating association. Many sports teams did not have multiple associations because it was detrimental to members. It was a race to the bottom. There was nothing that required the new KHA to have more than three (3) members. Three (3) members was inadequate and put too much power in the hands of a small group. The existing association had been in existence for forty-seven (47) years. This matter was not adequately vetted by the Horse Racing Commission; very few questions were asked, and the new KHA's bylaws were not submitted. Rank-and-file horsemen were not included in the discussions. The three (3) facilities that failed did not fail because of the association. The association tried to keep those facilities open.

Senator Thomas stated that he had built his reputation on supporting the underdog and that he was therefore sensitive to Mr. Avritt's situation; however, the commission's statement from the Statement of Consideration seemed to have been taken out of context. The commission stated in the Statement of Consideration that the commission did not expect there to be a negative impact on the existing association's ability to contract with tracks and tracks would be able to contract with both associations simultaneously, which would be good for the racing industry as a whole. The Statement of Consideration also stated that racing might be improved and might not be sustainable otherwise. Kentucky's signature industries, such as bourbon and racing, should continue to be improved as much as possible. Mr. Avritt stated that the existing association had diligently supported racing for forty-seven (47) years in Kentucky. Thoroughbred and standardbred racing were not congruous, and what benefited the much larger thoroughbred industry would not necessarily benefit the smaller standardbred industry. Other states did not have competing associations with contracts at the same facilities because it was disadvantageous to the members.

In response to questions by Co-Chair West, Mr. Avritt stated that matters of contract for the associations included number of racing days, simulcast division, and division of wagers. Competition between associations would put members at a disadvantage in these matters. The simulcast and wager money was used to generate purses, which then flowed to the horsemen. Horsemen did not get money directly from the association. The

money was also used to generate funding for the Sire Stakes Program. The new KHA was interested in money.

In response to a question by Co-Chair Hale, Ms. Wolsing stated that the Red Mile agreed in their letter that the existing association had worked hard to support the standardbred industry. The industry had become more diverse and could benefit from additional representation. Mr. Jackson stated that the industry had seen significant improvement and needed to be represented by professionals who supported the entire industry, rather than allowing more tracks to fail. The new KHA expected to have hundreds of members in the future. Mr. Avritt stated that the new KHA currently did not have enough members. The existing association was not responsible for track failures. The industry was not more diverse than in years past.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

General

810 KAR 2:001. Definitions.

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.

Flat and Steeplechase Racing

810 KAR 4:030. Entries, subscriptions, and declarations.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 17 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Standardbred Racing

810 KAR 5:001. Definitions.

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 and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 5:060. Entries and starters.

810 KAR 5:070. Running of the race.

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 1, 3 16, 26, 27, 39, 41, 43, 48, and 56 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Incentive and Development Funds

810 KAR 7:040. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 5, 6, 12, 15, and 23 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Harness Racing

811 KAR 1:250. Exotic wagering.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND

CONFORMITY paragraph and Sections 2 through 7 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: Kentucky Health Program: Medicaid Services

895 KAR 1:002E. Repeal of 895 KAR 001:001, 895 KAR 001:010, 895 KAR 001:015, 895 KAR 001:020, 895 KAR 001:025, 895 KAR 001:030, 895 KAR 001:035, 895 KAR 001:040, 895 KAR 001:045, 895 KAR 001:050, and 895 KAR 001:055. Kelli Rodman, executive director, and Jonathan Scott, regulatory and legislative advisor, represented the cabinet.

In response to questions by Co-Chair West, Mr. Scott stated that this administrative regulation was filed as an emergency because of concerns about on-going litigation costs. This situation complied with the statutory requirements for an emergency administrative regulation. Litigation was related to federal Medicaid laws. Co-Chair West stated that he was concerned about overuse of the emergency administrative regulation process and, in the future, more scrutiny would be placed on determining which administrative regulations truly were the result of an actual emergency.

Office of Inspector General: Division of Certificate of Need: Certificate of Need

900 KAR 6:075 & E. Certificate of need nonsubstantive review. Adam Mather, inspector general, and Kara Daniel, deputy inspector general, represented the office. Erich Blackburn, chief legal officer, Pikeville Medical Center; Janet Craig, attorney, Stites and Harbison; and Mike Sherrod, CEO, TriStar Greenview Hospital, appeared in opposition to this administrative regulation. Wade Stone, executive vice president, Medical Center Health, appeared in support of this administrative regulation.

In response to questions by Co-Chair West, Mr. Mather stated that this administrative regulation was filed as an emergency because the previous amendment to this administrative regulation resulted in specialty legislation, which only benefited one (1) provider in one (1) county. Originally, six (6) counties were expected to have providers affected by the amendment. Ms. Daniel stated that potential loss of state funds from the cost of on-going litigation was the stated reason for this administrative regulation. This emergency administrative regulation saved the cost of on-going litigation because that litigation stopped as the result of this filing. Co-Chair West stated that it was difficult to prove that litigation stopped as the result of an administrative regulation, and, in the future, more scrutiny would be placed on determining which administrative regulations truly were the result of an actual emergency.

In response to a question by Co-Chair Hale, Mr. Sherrod stated that Kentucky was one (1) of four (4) states with a Certificate of Need (CON) process. There were two (2) types of CON, substantive and nonsubstantive. The previous amendment to this administrative regulation changed EMS provider requirements to establish a nonsubstantive CON process. Patient care should always be the primary consideration. This change was a return to the substantive CON process. There was a lack of EMS access across Kentucky. For example, in Warren County, which was one (1) of the fastest-growing counties, there were two (2) hospitals, which were three (3) miles apart. The only EMS provider was directly affiliated with one (1) of the two hospitals. The EMS provider seemed to favor delivering patients to the ER of the hospital that was directly affiliated with the provider. Steering patients to the medically correct facility should be a high priority, which could better be accomplished with more than one (1) EMS provider in Warren County. EMS providers should only go through nonsubstantive CON review in order to maintain patient choice. Lack of EMS access led to mortality and morbidity. Northern Kentucky had been hard-hit by coronavirus (Covid 19), which could impact EMS access, especially if there were EMS employee infections with only one (1) provider. Redundancy was going to be important regarding coronavirus (Covid 19.) Mr. Sherrod requested that the subcommittee move all EMS providers

to nonsubstantive CON review or find this administrative regulation deficient.

In response to a question by Co-Chair Hale, Mr. Blackburn stated that Pikeville Medical Center was opposed to this administrative regulation. All EMS providers should be subject to only nonsubstantive CON review. Patients usually needed an EMS provider due to accident, illness, or transfer from one (1) medical facility to another or from a nursing home setting to a hospital and vice versa. Long wait times for any of these situations could result in death or long-lasting effects. Transfer delays affected bed turnover and could affect all patients "upstream."

In response to a question by Co-Chair Hale, Ms. Craig stated that the cabinet has stated that all EMS providers cannot be classified for nonsubstantive CON review because the cabinet lacked statutory authority to do so. The cabinet did have the authority. EMS provider delays caused death and significant health effects. Coronavirus (Covid 19) created the need for redundancy in EMS providers in case of employee infections. The economic strain from coronavirus (Covid 19) created additional problems related to patient transport. Ms. Craig requested that the subcommittee move all EMS providers to nonsubstantive CON review.

In response to questions by Representative Frazier, Mr. Sherrod stated that taxes were not an issue. Service areas were assigned geographically by road.

In response to questions by Co-Chair Hale, Mr. Sherrod stated that there had been instances in which a patient requested to be transported to one (1) facility, but were instead transported to the hospital with which with EMS provider was directly affiliated. There were affidavits to that effect. Destination guidelines were often disregarded. Medical reasons could be a factor in determining which hospital a patient was taken; however, that was rarely the issue. Mr. Blackburn stated that Pikeville Medical Center applied for a CON in October 2019. A hearing was held with the opposition to the CON. The hearing was delayed due to coronavirus (Covid 19.) Judges in this matter had conflicts of interest because they sat on the board of directors.

In response to a question by Co-Chair Hale, Mr. Stone stated that Medical Center Health, a not-for-profit hospital, supported this administrative regulation because Medical Center Health had supported Warren County EMS for over forty (40) years. Warren County's dispatch system was one (1) of only 250 accredited systems in the world. Warren County honored patient choice, and reports to the contrary were unsubstantiated. There did not seem to be an emergency situation when this administrative regulation was last filed on an emergency basis. Surrounding EMS providers without affiliation with the hospital also brought patients to Medical Center Health. Medical Center Health accepted many patients with coronavirus (Covid 19,) not to benefit the hospital, but in the interest of public health.

A motion was made by Representative Frazier and seconded by Representative Turner to find this administrative regulation deficient. A roll call vote was conducted. There being two (2) votes to find this administrative regulation deficient and six (6) votes not to find this administrative regulation deficient, the motion failed.

Senator Thomas explained his no vote. There was no indication that Bowling Green had a public health crisis regarding EMS providers. The current EMS provider seemed adequate, and the CON process was in progress. If there was a need for a second EMS provider, that would be determined through the CON review process.

Department for Public Health: Division of Healthcare: Health Services and Facilities

902 KAR 20:036. Operation and services; personal care homes. Kara Daniel, deputy inspector general; Adam Mather, inspector general; and Wendy Morris, commissioner, represented the division. Betsy Johnson, president, Kentucky Association of Health Care Facilities – Kentucky Center for Assisted Living, appeared in opposition to this administrative regulation. Heidi Schissler, legal director, Kentucky Department of Protection and

Advocacy, appeared for questions.

In response to a question by Co-Chair Hale, Mr. Mather stated that this administrative regulation included substantive changes that required Personal Care Home (PCH) staff to assist with a small number of clients transitioning to other living situations within the community. This assistance included helping clients learn Activities for Daily Living (ADLs) and Instrumental Activities for Daily Living (IADLs). Ms. Morris stated that there were federal requirements for state-funded supports for individuals who wished to live in the community, rather than in a congregate setting. In 2013, the cabinet first entered into an agreement with Kentucky Protection and Advocacy, as a response to the 1999 Olmstead decision. The settlement agreement had been amended twice since 2013. Staff of Community Mental Health Centers identified residents who wished to transition from congregate settings and worked with those individuals to develop a transition plan to establish which skills the individual needed to work on. PCH staff would then offer basic instruction on any identified ADL or IADL. Currently, there were seventeen (17) individuals in this situation across the state who were actively transitioning. This low number was unrelated to coronavirus (Covid 19.) The cabinet received feedback from PCHs and made changes to requirements based on that feedback. The training occurred during the normal workday. PCH staff were not responsible for identifying skills that needed improvement and were not responsible for ensuring that the client mastered the skills. PCH staff were with clients on a daily basis and were already required by existing requirements to assist with ADLs. This amendment added IADLs to the assistance requirements. While there had not been an increase in funding for PCHs, the cabinet was working to address financial concerns.

In response to questions by Co-Chair Hale, Ms. Johnson stated that the Kentucky Association of Health Care Facilities – Kentucky Center for Assisted Living opposed this administrative regulation because the new requirements were burdensome and constituted an unfunded mandate. At the September 2019 meeting of this subcommittee, the subcommittee asked the cabinet to meet further with stakeholders on this matter. The cabinet had not met with the Kentucky Association of Health Care Facilities – Kentucky Center for Assisted Living to work on this administrative regulation but had met with Kentucky Protection and Advocacy. The subcommittee should ask the cabinet to defer consideration of this administrative regulation to the July meeting in order to meet further with stakeholders. While there were currently only seventeen (17) clients transitioning, there could be more in the future. PCHs were not a party to the settlement agreement but were subject to it. Bruce Linder checked on this administrative regulation every month, and the cabinet declined to meet with stakeholders every month.

In response to a question by Co-Chair Hale, Mr. Mather stated that the cabinet did meet with stakeholders. This was not an unfunded mandate. Coronavirus (Covid 19) had caused delays with this administrative regulation. Further deferral would likely not result in changes. Ms. Daniel stated that the cabinet made changes twice to this administrative regulation based on comments from stakeholders. The cabinet and stakeholders disagreed regarding the issue of ADLs and IADLs, and further deferral was not expected to result in additional changes. Ms. Morris stated that collaboration was very important for the clients trying to transition.

In response to a question by Senator Raque Adams, Ms. Johnson stated that there was a meeting with the cabinet last week; however, that discussion was focused on 921 KAR 2:015 & E, which was the next administrative regulation on the subcommittee's agenda.

In response to questions by Senator Thomas, Ms. Johnson stated that this situation was more complex than described. PCHs were not part of the settlement agreement. These requirements were intended for a higher level of professional, such as an occupational therapist. Most employees had high school diplomas. Senator Thomas stated that PCHs already taught some of these skills.

In response to a question by Co-Chair Hale, Ms. Morris

stated that there had been a long process to establish the current version of the settlement agreement. This program was not occupational or other therapy. There had been a new appropriation of 2.2 million dollars for the current seventeen (17) clients affected. Ms. Johnson stated that the General Assembly appropriated the 2.2 million dollars for all PCHs, regardless of transitioning clients.

Further discussion of this matter is found in the section of these minutes regarding 921 KAR 2:015 & E, which is a companion administrative regulation to this one.

At the September 16 meeting of the Administrative Regulation Review Subcommittee, a motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1 through 4 and 7; and the SMI Screening Form to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. Laura Begin, regulation coordinator; Elizabeth Caywood, deputy commissioner; Kara Daniel, deputy inspector general; Adam Mather, inspector general; and Wendy Morris, commissioner, represented the division. Betsy Johnson, president, Kentucky Association of Health Care Facilities – Kentucky Center for Assisted Living, appeared in opposition to this administrative regulation. Heidi Schissler, legal director, Kentucky Department of Protection and Advocacy, appeared for questions.

In response to questions by Senator Raque Adams, Ms. Begin stated that the budget appropriation effective July 1, 2020, which established the 2.2 million dollars, was titled "Mental Illness or Intellectual Disability Supplemental Payments" and only specifically covered PCHs that served clients with mental illnesses or intellectual disabilities. Ms. Morris stated that there were currently seventeen (17) clients transitioning. The 2.2 million dollars was not solely for those seventeen (17) clients. Ms. Caywood stated that there were seventeen (17) PCHs that cared for up to 800 clients with mental illness or intellectual disabilities. PCHs also served clients such as the aged and blind. Senator Raque Adams stated that she preferred for these administrative regulations to be deferred to the July subcommittee meeting. Co-Chair West stated that he too preferred deferral to straighten out confusion.

In response to a question by Representative Frazier, Ms. Begin stated the cabinet recognized that it was frustrating that the budget language might not be as was intended.

Senator Thomas stated that these administrative regulations had already been delayed. The cabinet and stakeholders met last week without further resolution. It would be best for this matter to move forward.

In response to a question by Co-Chair West, Ms. Begin stated that there were forty (40) PCHs, but only seventeen (17) that were currently part of this program. Ms. Caywood stated that funding all forty (40) PCHs would represent an entirely new program, which could result in litigation. Ms. Schissler stated that the settlement agreement required ADLs and IADLs at all PCHs that served transitioning severely mentally ill clients. These requirements needed to move forward as part of the settlement agreement. Kentucky Department of Protection and Advocacy did not have a position regarding the funding component in the budget.

In response to questions by Co-Chair Hale, Ms. Johnson stated that the budget appropriation did not cite 902 KAR 20:036 or 921 KAR 2:015; therefore, funding was not limited as interpreted by the cabinet. PCHs were having difficulties finding adequate staff. These administrative regulations should be deferred to the July subcommittee. Mr. Mather stated that the cabinet would agree to defer 902 KAR 20:036. Ms. Begin stated that the cabinet would prefer not to defer 921 KAR 2:015 & E. Ms.

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Daniel stated that PCHs were already required to assist with ADLs and changes only added IADLs. The cabinet was not requiring specialty training.

A motion was made to approve the agency amendment, which proposed to amend Section 13 to allow a qualifying PCH to receive an increased per diem. Because there was not a second, the motion failed.

A motion was made and seconded to approve the following amendments: to amend Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Co-Chair Hale introduced Senator Reginald Thomas who was appointed to the subcommittee to fill the senate vacancy previously held by Senator Perry Clark.

Co-Chair West stated that he was concerned about overuse of the emergency administrative regulation process and, in the future, more scrutiny would be placed on determining which administrative regulations truly were the result of an actual emergency.

The following administrative regulations were deferred or removed from the June 9, 2020, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:050. Licenses and permits; fees.

Board of Social Work

201 KAR 23:070. Qualifying education and clinical practice under supervision.

Real Estate Appraisers

201 KAR 30:130. Education provider, instructor, and course.

Office of Agricultural Marketing: Industrial Hemp

302 KAR 50:012. Repeal of 302 KAR 050:040 and 302 KAR 050:050.

302 KAR 50:020. Policies and procedures for hemp growers.

302 KAR 50:030. Policies and procedures for hemp processors and handlers.

302 KAR 50:055. Sampling and THC testing, post-testing actions, disposal of noncompliant harvests.

302 KAR 50:060. Fees for the Hemp Licensing Program and forms.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET:
Department for Libraries and Archives: Division of Library
Services: Libraries**

725 KAR 2:060. Certification of public librarians.

725 KAR 2:070. Certification renewal of public librarians.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:010. Procedure for adjustments of claims.

**PUBLIC PROTECTION CABINET: Horse Racing Commission:
Medication Guidelines**

810 KAR 8:010. Medication; testing procedures; prohibited practices.

810 KAR 8:030. Disciplinary measures and penalties.

810 KAR 8:070. Bisphosphonates.

**Department for Medicaid Services: Division of Policy and
Operations: Medicaid Services**

907 KAR 1:604 & E. Recipient cost-sharing.

The subcommittee adjourned at 4:30 p.m. The next meeting

of the subcommittee is tentatively scheduled for July 14, 2020, at 1 p.m.

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 June 4, 2020**

The following administrative regulation was available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Energy for its meeting of June 4, 2020, having been referred to the Committee on April 1, 2020, pursuant to KRS 13A.290(6):

301 KAR 002:300 Black bear seasons and requirements

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

**EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW
SUBCOMMITTEE
Meeting of June 11, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Education Assessment and Accountability Review Subcommittee for its meeting of June 11, 2020, having been referred to the Subcommittee on March 13, 2020, pursuant to KRS 13A.290(6):

703 KAR 5:240
703 KAR 5:280

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) 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 June 11, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 47th year of the *Administrative Register of Kentucky*, from July 2020 through June 2021.

Locator Index - Effective Dates

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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 "45 Ky.R." or "46 Ky.R." notation are regulations that were originally published in previous years' issues of the Administrative Register of Kentucky but had not yet gone into effect when the last Register year ended.

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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

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A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this Register year. Additionally, this index includes information regarding regulations that had letters that stated a regulation shall be amended within 18 months.

Technical Amendment Index

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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

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A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

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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 47. 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 45 Ky.R. or 46 Ky.R., 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: Emergency regulations filed after 7/15/2019 are automatically set to expire 270 days from the date filed. The 270 days may be extended by one month, if comments were received. Emergency regulations expire upon the conclusion of the 270 days (or 270 days plus the number of days of the requested extension) or upon replacement by an ordinary regulation, whichever occurs first.

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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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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
010 KAR 002:020	02-24-2020	To be amended, filing deadline 08-24-21
012 KAR 001:120	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:125	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:130	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:160	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:170	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:175	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:080	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:090	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:100	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:110	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:120	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:130	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:140	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:160	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:170	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:010	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:020	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:030	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:040	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:050	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:060	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:070	06-06-2019	To be amended, filing deadline 12-10-20
013 KAR 001:030	02-06-2020	To be amended, filing deadline 08-06-21
013 KAR 001:050	02-06-2020	To be amended. Amendment filed 5-14-2020.
013 KAR 002:100	02-06-2020	To be amended, filing deadline 08-06-21
013 KAR 003:010	02-04-2020	To be amended, filing deadline 08-04-21
013 KAR 003:020	02-04-2020	To be amended, filing deadline 08-04-21
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013 KAR 003:060	02-04-2020	To be amended, filing deadline 08-04-21
016 KAR 001:040	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 001:050	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 002:040	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 002:050	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 002:180	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 003:060	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 003:070	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 004:020	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 004:050	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 005:010	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 009:010	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 009:020	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 009:050	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 009:070	02-27-2020	To be amended, filing deadline 08-27-21
016 KAR 009:090	02-27-2020	To be amended, filing deadline 08-27-21
030 KAR 001:010	02-28-2020	To be amended, filing deadline 08-28-21
030 KAR 001:020	02-28-2020	To be amended, filing deadline 08-28-21
030 KAR 001:040	02-28-2020	To be amended, filing deadline 08-28-21
030 KAR 001:050	02-28-2020	To be amended, filing deadline 08-28-21
030 KAR 003:010	02-28-2020	To be amended, filing deadline 08-28-21
030 KAR 003:020	02-28-2020	To be amended, filing deadline 08-28-21
030 KAR 003:030	02-28-2020	To be amended, filing deadline 08-28-21
032 KAR 001:100	09-27-2019	To be amended, filing deadline 03-27-21.
032 KAR 001:190	09-27-2019	To be amended, filing deadline 03-27-21.
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101 KAR 001:335	02-25-2020	To be amended, filing deadline 08-25-21

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101 KAR 001:345	02-25-2020	To be amended, filing deadline 08-25-21
101 KAR 001:365	02-25-2020	To be amended, filing deadline 08-25-21
101 KAR 001:367	02-25-2020	To be amended, filing deadline 08-25-21
101 KAR 001:375	02-25-2020	To be amended, filing deadline 08-25-21
101 KAR 001:395	02-25-2020	To be amended, filing deadline 08-25-21
101 KAR 001:400	02-25-2020	To be amended, filing deadline 08-25-21
103 KAR 008:090	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 016:320	02-19-2020	To be amended, filing deadline 08-19-21
103 KAR 016:352	02-19-2020	To be amended, filing deadline 08-19-21
103 KAR 018:020	02-19-2020	To be amended, filing deadline 08-19-21
103 KAR 018:090	02-19-2020	To be amended, filing deadline 08-19-21
103 KAR 026:060	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 026:100	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 027:050	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 027:150	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 027:170	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 027:230	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 028:060	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 028:170	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 030:091	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 030:120	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 030:140	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 030:180	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 030:190	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 030:250	01-28-2020	To be amended, filing deadline 07-28-21
103 KAR 043:140	01-28-2020	To be amended, filing deadline 07-28-21
200 KAR 005:317	02-19-2020	To be amended, filing deadline 08-19-21
201 KAR 002:061	01-29-2020	To be amended, filing deadline 07-29-21
201 KAR 002:205	01-29-2020	To be amended, filing deadline 07-29-21
201 KAR 008:520	12-03-2019	To be amended, filing deadline 06-03-21
201 KAR 008:540	04-18-2019	To be amended. Amendment filed 06-14-19.
201 KAR 008:550	07-29-2019	To be amended. Amendment filed 11-14-19.
201 KAR 020:085	04-16-2020	To be amended, filing deadline 10-21-21
201 KAR 021:001	12-11-2019	To be amended, filing deadline 06-11-21

Regulation Number	Letter Filed Date	Action
201 KAR 021:015	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:025	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:035	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:041	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:042	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:045	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:051	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:052	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:053	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:054	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:055	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:060	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:065	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:070	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:075	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:085	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:090	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:095	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 021:100	12-11-2019	To be amended, filing deadline 06-11-21
201 KAR 023:050	06-21-2019	To be amended, filing deadline 12-21-20
201 KAR 023:050	02-28-2020	To be amended, filing deadline 08-28-21
201 KAR 026:115	09-05-2019	To be amended, filing deadline 03-05-21
201 KAR 026:190	09-05-2019	To be amended, filing deadline 03-05-21
201 KAR 026:200	09-05-2019	To be amended, filing deadline 03-05-21
201 KAR 026:230	09-05-2019	To be amended, filing deadline 03-05-21
201 KAR 026:250	09-05-2019	To be amended, filing deadline 03-05-21
201 KAR 026:300	09-05-2019	To be amended, filing deadline 03-05-21
201 KAR 026:310	09-05-2019	To be amended, filing deadline 03-05-21
202 KAR 003:020	02-28-2020	To be amended, filing deadline 08-28-21
301 KAR 001:012	11-19-2019	To be amended, filing deadline 05-19-21
301 KAR 001:016	11-19-2019	To be amended, filing deadline 05-19-21
301 KAR 001:018	11-19-2019	To be amended, filing deadline 05-19-21
301 KAR 001:019	11-19-2019	To be amended, filing deadline 05-19-21
301 KAR 001:031	11-19-2019	To be amended, filing deadline 05-19-21

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301 KAR 001:050	11-19-2019	To be amended, filing deadline 05-19-21
301 KAR 001:082	11-19-2019	To be amended, filing deadline 05-19-21
301 KAR 001:120	11-19-2019	To be amended, filing deadline 05-19-21
301 KAR 001:125	11-19-2019	To be amended, filing deadline 05-19-21
301 KAR 001:140	11-19-2019	To be amended, filing deadline 05-19-21
301 KAR 001:210	11-19-2019	To be amended, filing deadline 05-19-21
301 KAR 001:400	11-19-2019	To be amended, filing deadline 05-19-21
301 KAR 002:015	11-19-2019	To be amended, filing deadline 05-19-21
301 KAR 002:041	11-19-2019	To be amended, filing deadline 05-19-22
301 KAR 002:050	11-19-2019	To be amended, filing deadline 05-19-23
301 KAR 002:082	02-05-2020	To be amended, filing deadline 08-5-21
301 KAR 002:084	11-19-2019	To be amended, filing deadline 05-19-24
301 KAR 002:111	11-19-2019	To be amended, filing deadline 05-19-25
301 KAR 002:142	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 002:224	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 002:230	11-19-2019	To be amended, filing deadline 05-19-26
301 KAR 002:260	11-19-2019	To be amended, filing deadline 05-19-27
301 KAR 003:010	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 003:012	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 003:026	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 003:027	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 003:030	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 003:110	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 004:001	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 004:010	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 004:020	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 004:050	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 004:070	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 004:100	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 004:110	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 005:001	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 005:030	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 005:050	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 005:100	02-05-2020	To be amended, filing deadline 08-05-21

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301 KAR 006:001	02-05-2020	To be amended, filing deadline 08-05-21
301 KAR 006:070	02-05-2020	To be amended, filing deadline 08-05-21
303 KAR 001:005	02-12-2020	To be amended, filing deadline 08-12-21
303 KAR 001:010	02-12-2020	To be amended, filing deadline 08-12-21
303 KAR 001:015	02-12-2020	To be amended, filing deadline 08-12-21
303 KAR 001:075	02-12-2020	To be amended, filing deadline 08-12-21
303 KAR 001:080	02-12-2020	To be amended, filing deadline 08-12-21
303 KAR 001:090	02-12-2020	To be amended, filing deadline 08-12-21
303 KAR 001:100	02-12-2020	To be amended, filing deadline 08-12-21
500 KAR 001:020	02-25-2020	To be amended, filing deadline 08-25-21
500 KAR 010:001	12-03-2019	To be amended. Amendment filed 12-03-19.
500 KAR 010:020	12-03-2019	To be amended. Amendment filed 12-03-19.
500 KAR 010:030	12-03-2019	To be amended. Amendment filed 12-03-19.
500 KAR 010:040	12-03-2019	To be amended. Amendment filed 12-03-19.
500 KAR 012:010	02-20-2020	To be amended, filing deadline 08-20-21
501 KAR 001:040	10-21-2019	To be amended. Amendment filed 10-21-19.
501 KAR 001:050	02-20-2020	To be amended, filing deadline 08-20-21
501 KAR 002:050	02-25-2020	To be amended, filing deadline 08-25-21
501 KAR 002:070	02-20-2020	To be amended, filing deadline 08-20-21
501 KAR 003:110	02-20-2020	To be amended, filing deadline 08-20-21
501 KAR 003:120	02-21-2020	To be amended, filing deadline 08-21-21
501 KAR 003:130	02-21-2020	To be amended, filing deadline 08-21-21
501 KAR 003:150	02-21-2020	To be amended, filing deadline 08-21-21
501 KAR 003:170	02-21-2020	To be amended, filing deadline 08-21-21
501 KAR 006:080	02-21-2020	To be amended, filing deadline 08-21-21
501 KAR 006:120	02-21-2020	To be amended. Amendment filed 5-14-20.
501 KAR 006:190	02-21-2020	To be amended, filing deadline 08-21-21
501 KAR 006:200	02-21-2020	To be amended, filing deadline 08-21-21
501 KAR 006:220	02-21-2020	To be amended, filing deadline 08-21-21
501 KAR 006:250	02-21-2020	To be amended, filing deadline 08-21-21
501 KAR 007:040	02-21-2020	To be amended, filing deadline 08-21-21
501 KAR 007:060	02-21-2020	To be amended, filing deadline 08-21-21
501 KAR 007:090	02-21-2020	To be amended, filing deadline 08-21-21
501 KAR 007:100	02-21-2020	To be amended, filing deadline 08-21-21

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803 KAR 002:010	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:015	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:016	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:018	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:019	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:021	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:040	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:050	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:060	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:062	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:070	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:080	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:090	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:095	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:100	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:110	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:115	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:120	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:122	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:125	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:127	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:130	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:140	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:170	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:220	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:230	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:240	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:301	02-25-2020	To be amended. Amendment filed 3-19-20.
803 KAR 002:304	02-25-2020	To be amended. Amendment filed 3-19-20.
803 KAR 002:310	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:311	02-25-2020	To be amended. Amendment filed 3-19-20.
803 KAR 002:312	02-25-2020	To be amended. Amendment filed 3-19-20.
803 KAR 002:315	02-25-2020	To be amended. Amendment filed 3-19-20.
803 KAR 002:316	02-25-2020	To be amended. Amendment filed 3-19-20.

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803 KAR 002:319	02-25-2020	To be amended. Amendment filed 3-19-20.
803 KAR 002:401	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:405	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:408	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:409	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:410	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:413	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:414	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:415	02-25-2020	To be amended, filing deadline 08-25-21
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803 KAR 002:420	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:422	02-25-2020	To be amended. Amendment filed 03-12-20.
803 KAR 002:424	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:430	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 002:600	02-25-2020	To be amended, filing deadline 08-25-21
803 KAR 025:015	08-20-2019	To be amended, filing deadline 02-20-21
803 KAR 025:021	08-20-2019	To be amended, filing deadline 02-20-21
803 KAR 025:220	08-20-2019	To be amended, filing deadline 02-20-21
811 KAR 001:250	03-18-2019	To be amended. Amendment filed 2-14-20.
815 KAR 004:010	02-21-2020	To be amended, filing deadline 08-21-21
815 KAR 004:025	02-21-2020	To be amended, filing deadline 08-21-21
815 KAR 004:027	02-21-2020	To be amended, filing deadline 08-21-21
815 KAR 007:080	02-21-2020	To be amended, filing deadline 08-21-21
815 KAR 010:060	02-21-2020	To be amended, filing deadline 08-21-21
815 KAR 010:070	02-21-2020	To be amended, filing deadline 08-21-21
815 KAR 020:150	10-14-2019	To be amended. Amendment filed 10-14-19.
815 KAR 030:010	02-21-2020	To be amended, filing deadline 08-21-21
815 KAR 030:060	02-21-2020	To be amended, filing deadline 08-21-21
902 KAR 002:065	10-18-2019	To be amended, filing deadline 04-18-21
902 KAR 004:110	11-26-2019	To be amended, filing deadline 05-26-21
920 KAR 001:030	11-12-2019	To be amended, filing deadline 04-18-21
921 KAR 001:020	12-06-2019	To be amended, filing deadline 06-06-21
921 KAR 001:390	12-06-2019	To be amended, filing deadline 06-06-22

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921 KAR 003:010	11-26-2019	To be amended, filing deadline 05-26-21
921 KAR 003:020	11-26-2019	To be amended, filing deadline 05-26-21
921 KAR 004:116	11-26-2019	To be amended. Amendment filed 5-28-20.
922 KAR 001:300	11-26-2019	To be amended, filing deadline 05-26-21
922 KAR 001:380	11-26-2019	To be amended, filing deadline 05-26-21
922 KAR 001:390	11-26-2019	To be amended, filing deadline 05-26-21
922 KAR 001:520	11-26-2019	To be amended, filing deadline 05-26-21
922 KAR 001:540	11-26-2019	To be amended, filing deadline 05-26-21
922 KAR 002:230	11-26-2019	To be amended, filing deadline 05-26-21
922 KAR 002:240	11-26-2019	To be amended, filing deadline 05-26-21
922 KAR 002:250	11-26-2019	To be amended, filing deadline 05-26-21
922 KAR 005:020	11-26-2019	To be amended, filing deadline 05-26-21

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 47th 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>.

Regulation Number	Date Corrected	Regulation Number	Date Corrected
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815 KAR 004:025	05-29-2020		
815 KAR 007:070	05-29-2020		
815 KAR 008:010	05-29-2020		
815 KAR 010:060	05-29-2020		
815 KAR 015:025	05-29-2020		
815 KAR 025:020	05-29-2020		
815 KAR 030:060	05-29-2020		

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Emergency Medical Services; 202 KAR Chapter 007
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