



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, March 15, 2021.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on April 13, 2021, at 1:00 p.m. in room 149 Capitol Annex. [ARRS Tentative Agenda - 1862](#) [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
Tuesday, April 13, 2021 at 1 p.m.
Annex Room 149



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

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General Administration

103 KAR 001:160. Mandatory electronic filing and payment requirements.

Sales and Use Tax; Service and Professional Occupations

103 KAR 026:100. Industrial laundry and linen supply services.

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201 KAR 032:060. Continuing education requirements.

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302 KAR 079:012. Motor fuel quality standards and specifications. (Amended After Comments)

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401 KAR 061:036. Emission guidelines and compliance times for municipal solid waste (MSW) landfills. (Amended After Comments)

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501 KAR 006:070. Kentucky Correctional Institution for Women.

LABOR CABINET

Department of Workplace Standards

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803 KAR 002:019. Receiving and unloading bulk hazardous liquids.

803 KAR 002:021. Identification, classification and regulation of potential occupational carcinogens. (Deferred from March)

803 KAR 002:050. Scope. (Deferred from March)

803 KAR 002:080. Advance notice of inspections. (Deferred from March)

803 KAR 002:090. Compliant inspections. (Deferred from March)

803 KAR 002:096. Repeal of 803 KAR 002:095 and 803 KAR 002:430. (Deferred from March)

803 KAR 002:100. Imminent danger. (Deferred from March)

803 KAR 002:115. Penalties. (Deferred from March)

803 KAR 002:120. Citations.

803 KAR 002:240. Time for filing discrimination complaint. (Deferred from March)

803 KAR 002:309. General environmental controls.

803 KAR 002:314. Machinery and machine guarding. (Deferred from March)

803 KAR 002:320 & E. Toxic and hazardous substances. ("E" expires 10-10-2021)

803 KAR 002:401. General interpretations.

803 KAR 002:405. Fire protection and prevention.

803 KAR 002:408. Tools – hand and power.

803 KAR 002:409. Welding and cutting.

803 KAR 002:410. Electrical.

803 KAR 002:413. Helicopters, hoists, elevators, and conveyers. (Deferred from March)

803 KAR 002:414. Motor vehicles, mechanized equipment, and marine operations.

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- 803 KAR 002:415. Excavations.
- 803 KAR 002:416. Concrete and masonry work.
- 803 KAR 002:417. Steel erection.
- 803 KAR 002:420. Blasting and use of explosives. (Deferred from March)
- 803 KAR 002:424. Diving.
- 803 KAR 002:600. Occupational safety and health standards for agriculture.

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- 806 KAR 002:060. Complaints.

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- 806 KAR 009:025. Licensing process. (Amended After Comments)

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- 806 KAR 012:120. Suitability in annuity transactions. (Amended After Comments)

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- 806 KAR 014:007. Rate and form filing for health insurers.
- 806 KAR 014:090. Grouping for preferential treatment prohibited.
- 806 KAR 014:110. Dividend plans; filing, participation.
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- 806 KAR 015:060. Universal life insurance.
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- 900 KAR 006:060. Timetable for submission of certificate of need applications.
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- 900 KAR 006:080. Certificate of need emergency circumstances.
- 900 KAR 006:090. Certificate of need filing, hearing, and show cause hearing.
- 900 KAR 006:095. Certificate of need administrative escalations.
- 900 KAR 006:100. Certificate of need standards for implementation and biennial review.
- 900 KAR 006:105. Certificate of need advisory opinions.
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- 900 KAR 006:115. Certificate of need requirements for critical access hospitals, swing beds, and continuing care retirement communities.

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- 921 KAR 003:025 & E. Technical requirements. ("E" expires 10-12-2021)
- 921 KAR 003:035. Certification process. (Amended After Comments) (Deferred from January)

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- 922 KAR 1:490E. Background checks for foster and adoptive parents and relative and fictive kin. ("E" expires 11/5/2021) (Filed with ordinary)

3. REGULATIONS REMOVED FROM APRIL'S AGENDA

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- 103 KAR 026:130. Landscaping services. (Withdrawn by Agency before publication, 01-28-2021)

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BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:380. Board authorized protocols. (Comments Received; SOC ext. due 04-15-2021)

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601 KAR 002:231. Repeal of 601 KAR 002:030. (Deferred from October)

601 KAR 002:232 & E. Kentucky Ignition Interlock Program. ("E" expires 04-25-2021) (Not Amended After Comments) (Deferred from December)

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Department of Insurance

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806 KAR 007:120. Finance committee of domestic insurers. (Withdrawn by Agency before publication, 01-15-2021)

Department of Workers' Claims

803 KAR 025:091. Workers' compensation hospital fee schedule. (Amended After Comments) (Deferred from February)

803 KAR 025:092. Workers' compensation pharmacy fee schedule. (Amended After Comments) (Deferred from April)

803 KAR 025:170. Filing of claims information with the Office of Workers' Claims. (Deferred from February)

803 KAR 025:175. Filing of insurance coverage and notice of policy change or termination. (Deferred from February)

803 KAR 025:185. Procedure for E-mail notification of cancellation or removal of location of specific workers' compensation coverage. (Deferred from February)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

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902 KAR 002:211E. Covering the face in response to declared national or state public health emergency. ("E" expires 10-02-2021) (Comments Received; SOC due 04-15-2021)

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902 KAR 095:040. Radon Contractor Registration Program. (Comments Received; SOC due ext. 04-15-2021)

Department for Community Based Services

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922 KAR 002:410E. Enhanced requirements for certified and licensed child care and limited duration child care programs as result of a declared state of emergency. ("E" expires 09-06-2021) (Deferred from March) (Withdrawn by Agency; 03-15-2021)

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.

STANDARD ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed under Senate Bill 2, 2021 Regular Session

(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file all proposed administrative regulations with the Regulations Compiler. Filed regulations shall include public hearing and comment period information; a regulatory impact analysis and tiering statement; a fiscal note on state and local government; and, if applicable, a federal mandate comparison and any required incorporated material. Administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register. Emergency administrative regulations become effective upon filing.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on a proposed administrative regulation. The public hearing is held between the 21st and the last workday of the month in which the public comment period ends. Information about the public comment period shall include: the place, time, and date of the hearing; the manner in which a person may submit written comments or a notification to attend the hearing; a statement specifying that unless a notification to attend the hearing is received no later than 5 workdays prior to the hearing date, the hearing may be cancelled; the deadline for submitting written comments; and the name, position, and contact information of the person to whom notifications and written comments shall be sent.

Public comment periods for ordinary regulations end on the last day of the month following publication; whereas, public comment periods for emergency regulations run through the last day of the month in which the regulation was published. For other ordinary regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

The administrative body shall notify the Compiler whether the hearing was held or cancelled and whether or not written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the close of the public comment period.

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

Pursuant to KRS 13A.190, emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. Expiration dates may be impacted by 2021 Regular Session legislation, including: [House Joint Resolution 77](#); KRS Chapter 39A, as amended by [Senate Bill 1](#); and by KRS Chapters 13A and 214, as amended by [Senate Bill 2](#).

BOARDS AND COMMISSIONS

Board of Pharmacy

(Emergency As Amended by Senate Standing Committee on Health and Welfare and House Standing Committee on Health and Family Services, February 22, 2021)

201 KAR 002:410E. Ordering and administering vaccinations.

As Amended version effective: February 22, 2021

For prior version see: [47 Ky.R. page 1343](#)

RELATES TO: KRS 39A.180, 315.010, 315.020, 315.050, 315.065, 315.135, 315.205, 315.500, 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 52136, **79190, 86 Fed. Reg. 7872**

STATUTORY AUTHORITY: KRS 315.500, 315.050

NECESSITY, FUNCTION, AND CONFORMITY: The Third Amendment to the Department of Health and Human Services Declaration under the PREP Act, 85 Fed. Reg. 15198, 85 Fed. Reg. 52136, requires the Board of Pharmacy to promulgate an administrative regulation to conform state law to federal law during the period of this public health emergency **resulting from the coronavirus (COVID-19) pandemic**. KRS 315.010(22) does not authorize pharmacists to order vaccinations **nor does[.]** KRS 315.010(22) ~~also does not~~ authorize the use of prescriber-approved protocols for pharmacists or pharmacist interns to administer vaccinations to children under the age of nine (9). The third amendment of 85 C.F.R. 15198, 85 Fed. Reg. 52136, requires that state-licensed pharmacists be authorized to order and **to** administer vaccinations to children between the ages of three (3) and seventeen (17) and that state-registered pharmacist interns and pharmacy technicians be authorized to administer vaccinations to children between the ages of three (3) and seventeen (17). **The Fourth Amendment to the Department of Health and Human Services Declaration under the PREP Act, 85 Fed. Reg. 79190, published on December 3, 2020 and effective on February 4, 2021, requires that technicians be authorized to administer childhood vaccinations and COVID-19 vaccinations and requires that state law establish a training requirement for all pharmacists, technicians, and interns that will be ordering or administering vaccinations pursuant to the declaration, and if the state does not have a training requirement, a twenty (20) hour requirement shall be enforced by 85 Fed. Reg. 79190 for immunity from liability to attach[Department of Health & Human Services Guidance issued on October 20, 2020 authorizes pharmacy technicians to administer vaccinations if they meet specific federal requirements listed in the federal guidance].** The Prep Act (42 U.S.C. 247d-6d(8)) preempts any state law that would prohibit or effectively prohibit activities authorized by the secretary in a PREP Act Declaration ~~including pharmacists ordering and administering vaccinations and pharmacist interns administering vaccinations to children between the ages of three (3) and seventeen (17). According to Department of Health and Human Services Advisory Opinion 20-03, issued on October 22, 2020, state law does not need to mirror federal requirements; however, state law shall allow for pharmacists to be able to order and to administer vaccinations to children between the ages of three (3) and seventeen (17), and pharmacist interns shall be able to administer vaccinations to children between the ages of three (3) and seventeen (17).~~ This administrative regulation establishes requirements for Kentucky to comply with 85 Fed. Reg. 52136 **and 79190**.

Section 1. Definitions. (1) "Administer" is defined by KRS **315.010(1)[315:010(4)]**.

(2) **"Certified Pharmacy Technician" is an individual who:**
(a) ~~Has successfully completed the Pharmacy Technician~~

~~Certification Exam administered by the Pharmacy Technician Certification Board (PTCB) or the examination for the Certification of Pharmacy Technicians by the National Healthcareer Association (NHA);~~

~~(b) The certificate issued by the PTCB or NHA is current.~~

~~(3) "Order" means an original or new order from a pharmacist for an FDA-approved or authorized vaccination or medication to treat emergency reactions to vaccines, including epinephrine.~~

~~(4) "Pharmacist" is defined by KRS 315.010(17).~~

~~(3)[(5)] "Pharmacist intern" is defined by KRS 315.010(18).~~

~~(4)[(6)] "Pharmacy technician" is defined by KRS 315.010(21).~~

(5) "Prescribe" means to issue an original or new order from a pharmacist for an FDA-approved or authorized vaccination or medication to treat emergency reactions to vaccines.

Section 2. Pharmacist Requirements. **(1) A pharmacist may [order and] administer a vaccine to an individual[, age three (3) or older,] pursuant to the Advisory Committee on Immunization Practices['] (ACIP) standard immunization schedule in accordance with KRS 315.010(22).**

(2) A pharmacist may administer a vaccine to a child, age three (3) through eight (8), pursuant to a prescriber-approved protocol.

(3) A pharmacist may prescribe and administer a vaccine to an individual eighteen (18) and under, pursuant to the ACIP standard immunization schedule, or a COVID-19 vaccine to any individual, if the pharmacist:

~~(a)[(1) Reports the administration of each vaccination by the pharmacist, pharmacist intern, or pharmacy technician to the Kentucky Immunization Registry administered by the Cabinet for Health and Family Services;~~

~~(2) Completes, or has completed, [a] practical training on administering vaccinations. This may include:~~

~~1. Completion of a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines;~~

~~2. Graduation from an ACPE-approved pharmacy school in which hands-on immunization training was part of the curriculum; or~~

~~3. Training via hands-on experience immunizing in current or previous pharmacy practice; and~~

~~(b)[(3) Completes a minimum of two (2) hours of immunization-related continuing education accredited by ACPE per each licensing period;~~

~~(4) Provides notification of the immunization to the individual's primary care provider upon the request of the individual or the individual's parent or guardian, if the individual:~~

~~(a) Is under eighteen (18) years of age; or~~

~~(b) Has a court-appointed guardian; and~~

~~(5) Possesses a current certificate in basic cardiopulmonary resuscitation.~~

Section 3. Pharmacist Intern Requirements. A pharmacist intern **under the general supervision of a pharmacist** may administer a vaccine ~~[ordered by a pharmacist, or pursuant to a prescriber-approved protocol or prescription drug order,] to an individual[, aged three (3) or older,] if the pharmacist intern:~~

(1) Completes, or has completed **as part of pharmacy school curriculum,** a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines; and

(2) Possesses a current certificate in basic cardiopulmonary resuscitation.

Section 4. Pharmacy Technician Requirements. A pharmacy technician may administer a vaccine under the general supervision of a pharmacist~~ordered by a pharmacist or pursuant to prescriber-approved protocol or prescription drug order~~ to an individual~~, aged three (3) or older~~, if the pharmacy technician:

(1) ~~Is a certified pharmacy technician;~~

~~(2)~~ Completes a minimum of two (2) hours of immunization-related continuing education accredited by the Accreditation Council for Pharmacy Education (ACPE) per each state registration period;

~~(2)(3)~~ Completes, or has completed, a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines; and

~~(3)(4)~~ Possesses a current certificate in basic cardiopulmonary resuscitation.

Section 5. ~~Prescriber-approved Protocols. (1) A pharmacist may utilize prescriber-approved protocols or a prescription drug order as a means to provide a vaccine for individuals aged nine (9) and older pursuant to KRS 315.010 (22), while the vaccine may be administered by a pharmacist, pharmacist intern or pharmacy technician. The pharmacy technician shall meet the conditions established in Section 4 of this administrative regulation, if administering a vaccination that has been provided by prescription drug order or prescriber-approved protocol.~~

~~(2) A pharmacist may utilize prescriber approved protocols or a prescription drug order as a means to provide a vaccine for individuals aged three (3) to eight (8), while the vaccine may be administered by a pharmacist, pharmacist intern or pharmacy technician. The pharmacist, pharmacist intern or pharmacy technician shall meet the conditions established in section 2, 3 or 4, respectively, of this administrative regulation.~~

~~Section 6.] Effective Date. (1) [This administrative regulation shall become effective at 5 p.m. on the date it is filed.~~

~~(2)~~ In accordance with KRS 13A.190, this administrative regulation shall remain in effect until:

(a) Expiration of the time period established by KRS 13A.190; or

(b) Withdrawn in accordance with KRS 13A.190(12).

~~(2)(3)~~ The Board of Pharmacy shall regularly consult with the Governor's Office, the Centers for Disease Control and Prevention, and other public health authorities to determine if this administrative regulation shall be withdrawn prior to its expiration under KRS 13A.190.

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.

**STATEMENT OF EMERGENCY
201 KAR 35:010E**

This emergency administrative regulation amendment is being promulgated to address an imminent threat to public health, safety, or welfare caused by the shortage of qualified counselors available to treat individuals during the current substance abuse crisis. Further, this emergency amendment is being promulgated to meet an imminent deadline imposed by state statute, namely SB 191. SB 191, signed by the Governor on April 24, 2020, and effective on March 1, 2021, amends KRS 309.080 to 309.089 to create two (2) additional credentials for drug and alcohol counseling. These

credentials are administered and enforced by the Kentucky Board of Alcohol and Drug Counselors ("Board"). Among other things, KRS 309.0813, as amended by SB 191, requires the Board to promulgate administrative regulations to administer and enforce the new credentials. This statutory change required the amendment of nine (9) regulations and nineteen (19) forms. The Board has been diligently working on these regulatory amendments and forms, since the passage of SB 191. This emergency amendment will allow the Board to certify applicants for the two (2) new credentials created by SB 191 and regulate them in compliance with the statute effective March 1, 2021. An ordinary administrative regulation is not sufficient, because of the imminent effective date of SB 191. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

TIM CESARIO, Chair
ANDY BESHEAR, Governor

**BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Emergency Amendment)**

201 KAR 35:010E. Definitions for 201 KAR Chapter 35.

EFFECTIVE: March 5, 2021

RELATES TO: KRS 309.080, 309.0805, 309.081, 309.0813, 309.084, 309.085, 309.086, 309.087, 309.089

STATUTORY AUTHORITY: KRS 309.0813(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813 requires the Kentucky Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing requirements for alcohol and drug counselors and peer support specialists. This administrative regulation establishes definitions of terms used by the board in administrative regulations pertaining to the credentialing of alcohol and drug counselors and peer support specialists.

Section 1. (1) "Academic course" means a course that is offered by a postsecondary institution accredited by a recognized accreditation agency and that is:

(a) An alcohol and drug counseling course, designated by title or content; or

(b) An academic course, relevant to alcohol and drug counseling.

(2) "Applicant" means an individual who has applied for temporary registration, registration, temporary certification, certification, or licensure in accordance with KRS 309.084 or a credential holder renewing a[his] credential[application] in accordance with KRS 309.085.

(3) "Approved" means recognized by the Kentucky Board of Alcohol and Drug Counselors.

(4) "Board" is defined by KRS 309.080(1).

(5) "Certified alcohol and drug counselor associate I" is defined by KRS 309.080(2).

(6) "Certified alcohol and drug counselor associate II" is defined by KRS 309.080(3).

(7) "Certified alcohol and drug counselor" is defined by KRS 309.080(4).

(8) "Chair" means the chairperson or vice-chairperson of the board.

(9)~~(7)~~ "Charge" means a specific allegation contained in a formal complaint, as established in subsection (14)~~(12)~~ of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 309, the administrative regulations promulgated thereunder, or another state or federal statute or regulation.

(10)~~(8)~~ "Classroom hour" means an academic hour from an accredited institution or continuing education hour.

(11)~~(9)~~ "Client" means an individual, family, or group who directly receives services from an alcohol and drug counselor or peer support specialist; a corporate entity or other organization if

the contract is to provide an alcohol and drug counselor or peer support specialist service of benefit directly to the corporate entity or organization; or a legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult.

(12)(10) “Clinical supervision” means a disciplined, tutorial process wherein principles are transformed into practical skills, with four (4) overlapping foci: administrative, evaluative, clinical, and supportive.

(13)(14) “Clinical supervisor” means a certified alcohol and drug counselor who has at least two (2) years of post-certification~~post-credential~~ experience and has attended the board-sponsored supervision training who provides supervision and whose credential is currently in good standing with the board, or a licensed clinical alcohol and drug counselor who has at least twelve (12) months of post-licensure experience or has attended the board-sponsored supervision training who provides supervision and whose credential is currently in good standing with the board.

(14)(12) “Complaint” means a written allegation of misconduct by a credentialed individual or another person, alleging a violation of:

- (a) KRS Chapter 309;
- (b) Administrative regulations promulgated in accordance with KRS Chapter 309;
- (c) Another state or federal statute or regulation; or
- (d) A combination of paragraphs (a), (b), or (c) of this subsection.

(15)(13) “Complaint screening committee” means a committee that reviews complaints, investigates reports, participates in informal proceedings to resolve a formal complaint, and consists of up:

(a) ~~Up~~ to three (3)~~two (2)~~ board members appointed by the chair; ~~and~~

(b) ~~If appointed, the executive director of the Division of Occupations and Professions, or another staff person, to be a non-voting member who is available to the committee for assistance.~~

(16)(14) “Continuing education hour” means fifty (50) clock minutes of participating in a continuing education experience.

(17)(15) “Credential holder” means a person who has a credential issued by the board pursuant to KRS 309.080 to 309.089~~is defined by KRS 309.080(3)~~.

(18)(16) “Disciplinary action” means to:

- (a) Revoke, suspend, place on probation, or restrict the credential holder; and
- (b) Publicly reprimand, publicly admonish, or fine.

(19)(17) “Education~~Educational~~” program” means an organized learning experience:

- (a) Planned and evaluated to meet behavioral objectives; and
- (b) Presented in one (1) session or in a series.

(20)(18) “Informal proceedings” means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a resolution~~dispensation~~ of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(21)(19) “Investigator” means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by ~~the Attorney General or~~ the board.

(22)(20) “Licensed clinical alcohol and drug counselor” is defined by KRS 309.080(6)(4).

(23)(21) “Licensed clinical alcohol and drug counselor associate” is defined by KRS 309.080(7)(5).

(24)(22) “Licensee” is defined by KRS 309.080(8)(6).

(25)(23) “Provider” means an organization approved by the Kentucky Board of Alcohol and Drug Counselors for providing continuing education programs.

(26)(24) “Registered alcohol and drug peer support specialist” is defined by KRS 309.080(10)(8).

(27)(25) “Registrant” is defined by KRS 309.080(11)(9).

(28)(26) “Relevant” means having content applicable to the practice of alcohol and drug counseling in accordance with the requirements of 201 KAR 35:040, Section 3(2).

(29)(27) “Work experience” means the hours spent performing the services, tasks, and reports necessary for providing

counseling, intervention, or support services to a person with a substance use disorder or that person’s significant others.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:47 pm

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on April 26, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on April 26, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by April 26, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android: <https://us02web.zoom.us/j/83379565231?pwd=VUF1MThJYTZnbjA1WmxMZEt0RCtyZz09>, Password: 930689 Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 201 KAR Chapter 35.

(b) The necessity of this administrative regulation: This regulation is necessary to define the terms used in 201 KAR Chapter 35.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute, KRS 209.0813(1), requires the board to promulgate regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a definition for terms used in 201 KAR Chapter 35.

(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 change the existing administrative regulation by: (1) adding temporary registration and temporary certification to the definition of “applicant”; (2) making pronouns gender neutral; (3) clarifying that a credential holder renews a credential not an application; (4) adding definitions for certified alcohol and drug counselor associate I and II; (5) updating statutory location for certified alcohol and drug counselor; (6) changing definition for “clinical supervisor” to reflect changes in statutory requirements, specifically, defining a clinical supervisor as a certified alcohol and drug counselor who has two (2) years of post-certification experience and has attended the board-sponsored training or a licensed clinical alcohol and drug counselor who has at least twelve (12) months of post-licensure experience or has attended the board-sponsored supervision training; (7)

deleting reference to the executive director of the Division of Occupations and Professions as a non-voting member of the complaint screening committee; (8) updating definition of credential holder to mean a person who has a credential issued by the board pursuant to KRS 309.080 to 309.089; (9) removing the Attorney General from the definition of “investigator.”

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to have clear definitions for terms used in the board’s regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute. The authorizing statute, KRS 209.0813(1), requires the board to promulgate regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing clear definitions for terms used in the board’s regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: There are no actions needed to be taken for compliance of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Applicants and credential holders benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operations are funded by fees paid by credential holders and applicants.

(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 to implement the changes made by this 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 or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as this regulation does not distinguish between similarly situated individuals on the basis of any factor.

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(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. 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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**STATEMENT OF EMERGENCY
201 KAR 35:020E**

This emergency administrative regulation amendment is being promulgated to address an imminent threat to public health, safety, or welfare caused by the shortage of qualified counselors available to treat individuals during the current substance abuse crisis. Further, this emergency amendment is being promulgated to meet an imminent deadline imposed by state statute, namely SB 191. SB 191, signed by the Governor on April 24, 2020, and effective on March 1, 2021, amends KRS 309.080 to 309.089 to create two (2) additional credentials for drug and alcohol counseling. These credentials are administered and enforced by the Kentucky Board of Alcohol and Drug Counselors (“Board”). Among other things, KRS 309.0813, as amended by SB 191, requires the Board to promulgate administrative regulations to administer and enforce the new credentials. This statutory change required the amendment of nine (9) regulations and nineteen (19) forms. The Board has been diligently working on these regulatory amendments and forms, since the passage of SB 191. This emergency amendment will allow the Board to certify applicants for the two (2) new credentials created by SB 191 and regulate them in compliance with the statute effective March 1, 2021. An ordinary administrative regulation is not sufficient, because of the imminent effective date of SB 191. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

TIM CESARIO, Chair
ANDY BESHEAR, Governor

**BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Emergency Amendment)**

201 KAR 35:020E. Fees.

EFFECTIVE: March 5, 2021

RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833,

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government

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309.084, ~~309.0841, 309.0842~~, 309.085(1)(a)

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5), (12), 309.085(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written examination, which applicants shall be required to successfully complete. KRS 309.0813(12) requires the board to promulgate administrative regulations establishing initial registration, certification, and licensure fees and renewal fees. This administrative regulation establishes those fees.

Section 1. Application Fees. (1) The application fee for board review of an application for a licensed clinical alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, certified alcohol and drug counselor, certified alcohol and drug counselor associate II, certified alcohol and drug counselor associate I, or registered alcohol and drug peer support specialist, KBADC Form 1, shall be fifty (50) dollars.

(2) The application fee shall be nonrefundable.

(3) An application shall lapse one (1) year from the date it is filed with the board office.

(4)[(a)] If an approved applicant applies one (1) or more times after the original application lapses, the applicant shall comply with the requirements of this subsection.

(a)[1-] The applicant shall successfully complete the examination required by the board within one (1) year~~two (2) years~~ from the date the original application is filed.

(b)[2-] If the applicant does not successfully complete the examination within the time period required by subparagraph (a)[1-] of this paragraph, the applicant shall update and refile the application prior to sitting for the examination again.[

~~(b) The fee for refiling the application form shall be twenty (20) dollars.]~~

Section 2. Comprehensive Examination Fees. (1) An applicant for registration as an alcohol and drug peer support specialist shall pay an examination fee of \$150. The fee for retaking the comprehensive examination for registration shall be \$150.

(2) An applicant for certification shall pay an examination fee of \$200. The fee for retaking the comprehensive examination for certification shall be \$200.

(3) An applicant for licensure shall pay an examination fee of \$200. The fee for retaking the comprehensive examination for licensure shall be \$200.

Section 3. Credentialing Fees. (1)[(a)] The registration fee for an alcohol and drug peer support specialist shall be \$100.

(2)[(b)] The certification fee for a certified alcohol and drug counselor shall be \$200.

(3)[(c)] The licensure fee for a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be \$300.[

~~(2) If the applicant successfully completes all requirements for registration, certification, or licensure, the fee established in subsection (1) of this section shall cover credentialing for the initial three (3) year period.]~~

Section 4. Renewal Fees and Penalties. (1)(a) A registration, certificate, or license not renewed within ninety (90) days after the holder's renewal date shall be deemed cancelled in accordance with KRS 309.085(2).

(b) A person holding a cancelled registration shall not use the title "registered alcohol and drug peer support specialist" or hold himself or herself out as a registered alcohol and drug peer support specialist or engage in the practice of alcohol and drug peer support services.

(c) A person holding a canceled certificate shall not:

1. Use~~use~~ the title "certified alcohol and drug counselor," ~~or~~ hold himself or herself out as a certified alcohol and drug counselor, or engage in the practice of alcohol and drug counseling.

2. Use the title temporary certified alcohol and drug counselor,

hold himself or herself out as a temporary alcohol and drug counselor, or engage in the practice of alcohol and drug counseling.

3. Use the title "certified alcohol and drug counselor associate I," or hold himself or herself out as a certified alcohol and drug counselor associate I, or engage in the practice of alcohol and drug counseling.

4. Use the title "certified alcohol and drug counselor associate II," or hold himself or herself out as a certified alcohol and drug counselor associate II, or engage in the practice of alcohol and drug counseling.

(d) A person holding a canceled license shall not use the title "licensed clinical alcohol and drug counselor" or hold himself or herself out as a licensed clinical alcohol and drug counselor or engage in the practice of alcohol and drug counseling.

(e) A person holding a canceled license as a licensed clinical alcohol and drug counselor associate shall not use the title "licensed clinical alcohol and drug counselor associate" or hold himself or herself out as a licensed clinical alcohol and drug counselor associate or engage in the practice of alcohol and drug counseling.

(2) The fees and penalties established in this subsection shall be paid in connection with registration, certification, or licensure renewals.

(a) The renewal fee for registration as a temporary registered alcohol and drug peer support specialist shall be fifty (50) dollars for a two (2) year period, and shall accompany the Application for Renewal, KBADC Form 16.

(b) The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$100 for registration as a temporary registered alcohol and drug peer support specialist for a two (2) year period.

(c)[(a)] The renewal fee for registration as a registered alcohol and drug peer support specialist shall be \$100 for a three (3) year period, and shall accompany the Application for Renewal, KBADC Form 16.

(d)[(b)] The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$150 for registration as a registered alcohol and drug peer support specialist for a three (3) year period.

(e)[(e)] The renewal fee for certification as a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, or a temporary certified alcohol and drug counselor shall be \$100 for a two (2) year period, and shall accompany the Application for Renewal.

(f) The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$150 for certification as a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, or a temporary certified alcohol and drug counselor for a two (2) year period.

(g) The renewal fee for certification as a certified alcohol and drug counselor shall be \$200 for a three (3) year period, and shall accompany the Form 16 Application for Renewal.

(h)[(d)] The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$250 for certification as a certified alcohol and drug counselor for a three (3) year period.

(i)[(e)] The renewal fee for licensure shall be \$300 for a three (3) year period, and shall accompany the Application for Renewal.

(j)[(f)] The late renewal fee for the ninety (90) day grace period, as well as licensure for a three (3) year period, shall be a:

1. \$300 fee; and
2. Penalty fee of fifty (50) dollars.

Section 5. Reinstatement of a Canceled Registration, Certificate, or Licensure. (1) A canceled registration may be reinstated within one (1) year of the anniversary date of issue of renewal by:

(a) Submitting a completed Application for Reinstatement;

(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 ~~and of ten (10) hours of continuing education during the one (1) year period~~; and

(c) Payment of a \$200 reinstatement fee for registration for a three (3) year period.

(2) A canceled certificate of a certified alcohol and drug counselor, certified drug and alcohol counselor associate II, and

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certified alcohol and drug counselor associate I may be reinstated within one (1) year of the anniversary date of issue of renewal by:

- (a) Submitting a completed Application for Reinstatement;
- (b) Proof of completion of continuing education in accordance with 201 KAR 35:040[and of twenty (20) hours of continuing education during the one (1)-year period]; and
- (c) Payment of a \$300 reinstatement fee, for certification for a three (3) year period.

(3) A canceled license may be reinstated within one (1) year of the anniversary date of issue of renewal by:

- (a) Submitting a completed Application for Reinstatement;
- (b) Proof of completion of continuing education in accordance with 201 KAR 35:040[and of twenty (20) hours of continuing education during the one (1)-year period]; and
- (c) Payment for licensure for a three (3) year period, which shall be a:
 - 1. \$300 fee; and
 - 2. Penalty fee of \$100.

Section 6. Duplicate Credential ~~fee~~[and ID Card Fees]. [(1)] The fee for a duplicate credential shall be twenty (20) dollars. [

~~(2) The fee for a duplicate ID card shall be ten (10) dollars.]~~

Section 7. Inactive Status Fees. (1) The enrollment fee for voluntarily placing a registration, certificate, or license in inactive status in accordance with 201 KAR 35:080 shall be fifty (50) dollars.

(2) The annual renewal fee for a registration, certificate, or license enrolled in inactive status shall be twenty-five (25) dollars based on the renewal date.

(3)(a) The fee for reactivation of a registration shall be \$100 for a three (3) year period commencing on the date the board approves the application for reactivation.

(b) The fee for reactivation of a registration as a registered temporary registered alcohol and drug peer support specialist, certificate as a temporary certified alcohol and drug counselor, certificate as a certified alcohol and drug counselor associate I, and certificate as a certified alcohol and drug counselor associate II shall be fifty (50) dollars for a two (2) year period commencing on the date the board approves the application for reactivation.

(c) The fee for reactivation of a certificate as a certified alcohol and drug counselor shall be \$200 for a three (3) year period commencing on the date the board approves the application for reactivation.

(d)[(e)] The fee for reactivation of a license shall be \$300 for a three (3) year period commencing on the date the board approves the application for reactivation.

Section 8. Continuing Education Fees. (1) For purposes of this administrative regulation, a continuing education sponsor shall be an individual or entity that provides a program of continuing education to credential holders that has been reviewed and approved by the board to meet the continuing education requirements set forth in 201 KAR 35:040.

(2) Approvals may consist of a single workshop or a program of courses and shall be effective for one (1) year from the date of approval.

(3) The fee for approval of an application for a single program provider shall be fifty (50) dollars.

(4) The fee for approval of an application for a continuing education sponsor providing a program of courses shall be \$250.

(5) Continuing education sponsors who have received approval for their program of courses may apply for renewal of the approval in accordance with 201 KAR 35:040 and shall pay an annual renewal fee of \$150.

(6)(a) The fee for review of an application for a substantial change in curriculum of an approved program shall be fifty (50) dollars.

(b) A substantial change shall be considered as the addition of a workshop or course to a pre-approved program, or changes to the content of a pre-approved workshop or program which is in excess of twenty (20) percent.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KBADC Form 1, Application", ~~March 2021~~[June 2015];
- (b) "KBADC Form 16, Application for Renewal", ~~March 2021~~[June 2015]; and
- (c) "KBADC Form 17, Application for Reinstatement", ~~March 2021~~[June 2015].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32[911 Leewood Drive], Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on April 26, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on April 26, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by April 26, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android: <https://us02web.zoom.us/j/83379565231?pwd=VUF1MThJYTZnbmN1WmxMZEt0RCtyZz09>, Password: 930689, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application, comprehensive examination, credential, renewal, penalty, reinstatement, duplicate credential, inactive status, and continuing education fees.

(b) The necessity of this administrative regulation: The necessity of this regulation is to advise the public, credential holders, and applicants of fees to be assessed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as KRS 309.0813(12), the authorizing statute, gives the board the ability to promulgate regulations regarding the establishment of fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statutes by establishing the fees to be assessed for the application, comprehensive examination, credential, renewal, penalty, reinstatement, duplicate credential, inactive status, and 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 change the existing administrative regulation by: (1) adding an application fee of fifty (50) dollars for a certified alcohol and drug counselor associate I and II; (2) decreasing the time to complete the examination required by the board from two (2) years to one (1) year; (3) deleting, as duplicative of other regulations, the fee for refiling the application form; (4) deleting a provision allowing credentialing fees for one credential to cover credentialing fees for other credentials obtained within three (3) years; (5) prohibiting the use of the titles temporary alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II for credential holders whose certification has canceled; (6) setting the renewal fee for a temporary registered alcohol and drug peer support specialist at fifty (50) dollars for a two (2) year period and the late renewal fee at \$100; (7) setting the renewal fee for a temporary certified alcohol and drug counsel, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$100 for a two (2) year period; (8) setting the late renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$150; (9) removing requirement from this regulation that credential holders complete ten (10) hours of continuing education for reinstatement; (10) adding certified alcohol and drug counselor associate I and II to the list of credential holders that may reinstate a canceled certificate; (11) removing requirement of twenty (20) hours of continuing education during a one (1) year period for reinstatement; (12) removing the requirement of twenty (20) hours of continuing education during the one (1) year period of cancellation to reinstate a license; (13) deleting the option for a duplicate ID Card; (14) deleting the fee for a duplicate ID card; (15) establishing the fee for reactivation of a registered temporary alcohol and drug peer support specialist, temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, certified alcohol and drug counselor associate II credentials at fifty (50) dollars; (16) updating the board's address; and (17) adding the board's Web site address.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish fees for credential holders and other services provided by the board.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 309.0813(12), which gives the board the ability to promulgate regulations regarding the establishment of fees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by establishing the fees to be assessed for the application, credential, renewal, penalty, reinstatement, duplicate credential, and inactive status for the alcohol and drug counselor associate I and II.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: Applicants and credential holders shall pay a fee associated with the credential or services sought.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This

amendment to the administrative regulation establishes new fees for the newly created credentials of alcohol and drug counselor associate I and II.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, applicants and credential holders will know the fees associated with their credential and services provided.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(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 regulation establishes: an application fee of fifty (50) dollars for certified alcohol and drug counselor associate I and II; a renewal fee of fifty (50) dollars for a temporary registered alcohol and drug peer support specialist; a late renewal fee of \$100 for registration as a temporary registered alcohol and drug peer support specialist; a renewal fee of \$100 for certification as a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, and a temporary certified alcohol and drug counselor; a late renewal fee of \$150 for a temporary certified alcohol and drug counselor, a certified alcohol and drug counselor associate I, and a certified alcohol and drug counselor associate II; a reinstatement fee of \$300 for a certified alcohol and drug counselor, certified drug and alcohol counselor associate II, and certified alcohol and drug counselor associate I; and a reactivation fee of fifty (50) dollars for a temporary certified alcohol and drug counselor, certificate as a certified alcohol and drug counselor associate I, and certificate as a certified alcohol and drug counselor associate II.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation established directly or indirectly the following fees: an application fee of fifty (50) dollars for certified alcohol and drug counselor associate I and II; a renewal fee of fifty (50) dollars for a temporary registered alcohol and drug peer support specialist; a late renewal fee of \$100 for registration as a temporary registered alcohol and drug peer support specialist; a renewal fee of \$100 for certification as a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, and a temporary certified alcohol and drug counselor; a late renewal fee of \$150 for a temporary certified alcohol and drug counselor, a certified alcohol and drug counselor associate I, and a certified alcohol and drug counselor associate II; a reinstatement fee of \$300 for a certified alcohol and drug counselor, certified drug and alcohol counselor associate II, and certified alcohol and drug counselor associate I; and a reactivation fee of fifty (50) dollars for a temporary certified alcohol and drug counselor, certificate as a certified alcohol and drug counselor associate I, and certificate as a certified alcohol and drug counselor associate II.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all credential holders.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (12), 309.083, 309.0831, 309.0832, 309.0833(1)(a), 309.084, 309.0841, 309.0842, and 309.085.

(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? The board is unable to determine how much revenue this administrative regulation will generate for state or local government for the first year. The amendments to this administrative regulation: set an application fee of fifty (50) dollars for a certified alcohol and drug counselor associate I and II; set the renewal fee for a temporary registered alcohol and drug peer support specialist at fifty (50) dollars for a two (2) year period and the late renewal fee at \$100; set the renewal fee for a temporary certified alcohol and drug counsel, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$100 for a two (2) year period; set the late renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$150; delete the fee for a duplicate ID card; and establish the fee for reactivation of a registered temporary alcohol and drug peer support specialist, temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, certified alcohol and drug counselor associate II credentials at fifty (50) dollars.

(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 board is unable to determine how much revenue this administrative regulation will generate for state or local government on an ongoing basis. The amendments to this administrative regulation: set an application fee of fifty (50) dollars for a certified alcohol and drug counselor associate I and II; set the renewal fee for a temporary registered alcohol and drug peer support specialist at fifty (50) dollars for a two (2) year period and the late renewal fee at \$100; set the renewal fee for a temporary certified alcohol and drug counsel, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$100 for a two (2) year period; set the late renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$150; delete the fee for a duplicate ID card; and establish the fee for reactivation of a registered temporary alcohol and drug peer support specialist, temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, certified alcohol and drug counselor associate II credentials at fifty (50) dollars.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

**STATEMENT OF EMERGENCY
201 KAR 35:025E**

This emergency administrative regulation amendment is being promulgated to address an imminent threat to public health, safety, or welfare caused by the shortage of qualified counselors available to treat individuals during the current substance abuse crisis. Further, this emergency amendment is being promulgated to meet an imminent deadline imposed by state statute, namely SB 191. SB 191, signed by the Governor on April 24, 2020, and effective on March 1, 2021, amends KRS 309.080 to 309.089 to create two (2) additional credentials for drug and alcohol counseling. These

credentials are administered and enforced by the Kentucky Board of Alcohol and Drug Counselors ("Board"). Among other things, KRS 309.0813, as amended by SB 191, requires the Board to promulgate administrative regulations to administer and enforce the new credentials. This statutory change required the amendment of nine (9) regulations and nineteen (19) forms. The Board has been diligently working on these regulatory amendments and forms, since the passage of SB 191. This emergency amendment will allow the Board to certify applicants for the two (2) new credentials created by SB 191 and regulate them in compliance with the statute effective March 1, 2021. An ordinary administrative regulation is not sufficient, because of the imminent effective date of SB 191. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

TIM CESARIO, Chair
ANDY BESHEAR, Governor

**BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Emergency Amendment)**

201 KAR 35:025E. Examinations.

EFFECTIVE: March 5, 2021
RELATES TO: KRS 309.083(5), 309.0831(5), 309.0832(4), 309.0833

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written examination, which applicants are required to successfully complete. This administrative regulation establishes those examination requirements.

Section 1. Comprehensive Examination. (1) An applicant for registration as an alcohol and drug peer support specialist shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(2) An applicant for certification as a certified alcohol and drug counselor shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(3) An applicant for licensure shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

Section 2. Remediation Plan. (1) If an applicant fails the examination, the applicant shall:

(a) Not retake the examination within ninety (90) days of the failed examination date;

(b) Submit a KBADC Form 19, Re-Examination Application; and

(c) Submit the examination fee for the respective examination listed in 201 KAR 35:020, Section 2.

(2) If the applicant fails the examination twice or more, the applicant shall submit a remediation plan after each failed examination:

(a) To address the deficiencies cited in the examination results; and

(b) Cosigned by the board-approved supervisor.

(3) Upon completion of the remediation plan approved by the board, the applicant may request permission to retake the examination by filing a KBADC Form 19, Re-Examination Application, and submitting the examination fee for the respective examination listed in 201 KAR 35:020, Section 2.

Section 3. Incorporation by Reference. (1) "KBADC Form 19, Re-Examination Application", December 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St. 2 SC 32~~914 Leewood Drive~~, Frankfort, Kentucky 40601, Monday through Friday, 8:00

a.m. to 4:30 p.m. The board's Web site address is:
<https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on April 26, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on April 26, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by April 26, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android: <https://us02web.zoom.us/j/83379565231?pwd=VUF1MThJYTZnbm01WmxMZEt0RCtyZz09>, Password: 930689, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the comprehensive examination requirement for each applicant and the process that an applicant must satisfy if the applicant fails the examination.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure for the examination and the process that an applicant must satisfy if the applicant fails the examination.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the establishment of examinations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the comprehensive examination requirement for each applicant and the process that an applicant must satisfy if the applicant fails the examination.

(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 change the existing administrative regulation by clarifying that applicants for certification as a certified alcohol and drug counselor are required to take an examination and no other applicants for certification. The amendment also updates the board's address.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because two new credentials for certification were created by the General Assembly that does not require an applicant to take a comprehensive examination. This amendment clarifies that only applicants for certification as a certified alcohol and drug counselor are required

to take a comprehensive examination.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 309.0813(4). The authorizing statute gives the board the ability to promulgate regulations regarding the establishment of examinations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assist in the effective administration of the statutes by clarifying that only applicants for certification as a certified alcohol and drug counselor are required to take an examination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: An applicant for certification as a certified alcohol and drug counselor must take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: An applicant for certification as a certified alcohol and drug counselor must pay a fee to take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, an applicant has the opportunity to successfully pass the required examination.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(9) TIERING: Is tiering applied? Tiering was not applied. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Board of Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1) (effective March 1, 2021) requires the

board to promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(4) (effective March 1, 2021) requires the board to approve the examination required of applicants for licensure or certification as alcohol and drug counselors and applicants for registration as alcohol and drug peer support specialists, and promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and grading of the examination. KRS 309.0813(5) (effective March 1, 2021) requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A to define the process to register with the board as a registered alcohol and drug peer support specialist, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor.

(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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

**STATEMENT OF EMERGENCY
201 KAR 35:040E**

This emergency administrative regulation amendment is being promulgated to address an imminent threat to public health, safety, or welfare caused by the shortage of qualified counselors available to treat individuals during the current substance abuse crisis. Further, this emergency amendment is being promulgated to meet an imminent deadline imposed by state statute, namely SB 191. SB 191, signed by the Governor on April 24, 2020, and effective on March 1, 2021, amends KRS 309.080 to 309.089 to create two (2) additional credentials for drug and alcohol counseling. These credentials are administered and enforced by the Kentucky Board of Alcohol and Drug Counselors ("Board"). Among other things, KRS 309.0813, as amended by SB 191, requires the Board to promulgate administrative regulations to administer and enforce the new credentials. This statutory change required the amendment of nine (9) regulations and nineteen (19) forms. The Board has been diligently working on these regulatory amendments and forms, since the passage of SB 191. This emergency amendment will allow the Board to certify applicants for the two (2) new credentials created by SB 191 and regulate them in compliance with the statute effective March 1, 2021. An ordinary administrative regulation is not sufficient, because of the imminent effective date of SB 191. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

TIM CESARIO, Chair
ANDY BESHEAR, Governor

**BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Emergency Amendment)**

201 KAR 35:040E. Continuing education requirements.

EFFECTIVE: March 5, 2021

RELATES TO: KRS 309.085(1)(b)

STATUTORY AUTHORITY: KRS 309.0813(2), 309.085(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(2) and 309.085(1)(b) authorize the Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Basic Continuing Education Requirements. (1)(a) A minimum of ten (10) continuing education hours each year shall be accrued by each person holding a registration as an alcohol and drug peer support specialist.

(b) A minimum of thirty (30) continuing education hours, including at least six (6) continuing education hours in ethics, each year shall be accrued by each person holding a certificate as a certified alcohol and drug counselor associate I and a certified alcohol and drug counselor associate II.

(c) A minimum of sixty (60) continuing education hours shall be accrued by each person holding a certificate as a certified alcohol and drug counselor during the three (3) year certification period for renewal with at least three (3) continuing education hours in ethics.

(d)[(e)] A minimum of sixty (60) continuing education hours shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor during the three (3) year licensure period for renewal with at least three (3) continuing education hours in ethics.

(e)[(d)] A minimum of twenty (20) continuing education hours each year shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor associate. A licensed clinical alcohol and drug counselor associate shall obtain at least three (3) continuing education hours in ethics during the renewal cycle.

(2) All continuing education hours shall be relevant to the field of alcohol and drug counseling.

(3) A credential holder shall determine prior to attending a specific continuing education program that the program:

- (a) Has been approved by the board; or
- (b) Is offered or sponsored by an organization approved by the board to provide continuing education programs.

(4) If the specific continuing education program is not preapproved as established in subsection (3) of this section, the credential[certificate] holder may apply for board approval by providing the information required by Section 4 of this administrative regulation.

(5) A person credentialed by the board[credential holder] shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management as required by KRS 210.366. The suicide assessment, treatment, and management continuing education course shall be approved by the board, be provided by an entity identified in Section 2(4)(b) of this administrative regulation, or be approved by one (1) of the following boards:

- (a) Kentucky Board of Social Work;
- (b) Kentucky Board of Licensure of Marriage and Family Therapists;
- (c) Kentucky Board of Licensed Professional Counselors;
- (d) Kentucky Board of Licensure for Pastoral Counselors;
- (e) Kentucky Board of Examiners of Psychology; or
- (f) Kentucky Board of Licensure for Occupational Therapy.

Section 2. Methods of Acquiring Continuing Education Hours.

(1) Continuing education hours applicable to the renewal of the credential shall be directly related to the professional growth and development of a credential holder.

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(2) Continuing education hours may be earned by:

(a) Attending a continuing education program that has prior approval by the board;

(b) The completion of appropriate academic coursework; or

(c) Other alternative methods approved by the board in accordance with subsection (6) of this section.

(3) At least fifty (50) percent of the required continuing education hours for a credential holder shall be earned through live synchronous or face-to-face continuing education presentations.

(4) Attendance at continuing education programs automatically approved by the board.

(a) A program relevant to the practice of alcohol and drug counseling that is provided, approved, or sponsored by any of the providers listed in paragraph (b) of this subsection shall be:

1. Approved without further review; and

2. Exempt from the program fee established in 201 KAR 35:020, Section 8.

(b) The provisions of this subsection shall apply to the following providers:

1. The National Association of Addiction Professionals (NAADAC) and its member boards;

2. The International Certification and Reciprocity Consortium (ICRC);

3. The Kentucky Cabinet for Health and Family Services, Division of Mental Health and

Substance Abuse and its subcontractors;

4. Community Mental Health Centers;

5. The Kentucky School of Alcohol and Drug Studies;

6[5]. An Addiction Technology Transfer Center (ATTC);

7[6]. State or United States Regional Addiction Training Institute;

8[7]. Clinical Applications of the Principles on Treatment of Addictions and Substance Abuse (CAPTASA); or

9[8]. National Conference on Addiction Disorders (NCAD).

(5)(a) Academic coursework. An academic course, as defined in 201 KAR 35:010, Section 1(1), shall not require board review or approval.

(b) A general education course, or elective designated to meet academic degree requirements, shall be acceptable for continuing education credit if it is relevant to the practice of alcohol and drug counseling.

(c) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling fifteen (15) continuing education hours.

(6) Alternative methods for obtaining continuing education hours; programs requiring board review and approval. The following activities shall be reviewed by the board to determine whether or not the activity complies with the requirements of Section 3(2) of this administrative regulation:

(a)1. A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (4)(b) of this section; or

2. A program or academic course presented by the credential holder, who shall earn two (2) continuing education hours for each contact hour of instruction, unless it is repeated instruction of the same course; or

(b) A relevant publication in a professionally recognized or juried publication authored by the credential holder, who shall earn continuing hours as follows:

1. Five (5) continuing education hours for each published abstract or book review in a refereed journal;

2. Ten (10) continuing education hours for each book chapter or monograph;

3. Fifteen (15) continuing education hours for each published article in a refereed journal; and

4. Twenty (20) continuing education hours for each published book.

Section 3. Procedures for Preapproval of Continuing Education Programs. (1) An applicant seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least thirty (30) days in advance of the commencement of

the program, and shall provide the information required in Section 4 of this administrative regulation.

(2) A continuing education activity shall be qualified for approval if the activity:

(a) Is an organized program of learning;

(b) Pertains to subject matter relating to alcohol and drug counseling;

(c) Enhances the professional competence of the credential holder by:

1. Refreshing knowledge and skills; or

2. Educating on a new topic or subject; and

(d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

(3)(a) The board may monitor or review a continuing education program approved by the board, in accordance with this section.

(b) Upon evidence of significant variation in the program presented from the program approved, the board shall withdraw approval of the hours granted to the program.

Section 4. Subsequent Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is subsequently secured from the board.

(2) The following information shall be submitted for board review of a program:

(a) A published course or seminar description;

(b) The name and qualifications of the instructor;

(c) A copy of the program agenda indicating hours of education;

(d) Number of continuing education hours requested;

(e) Official certificate of completion or college transcript from the sponsoring agency or college; and

(f) Continuing Education Program Application for continuing education credits approval.

Section 5. Application for Approved Sponsor. (1) A company, individual, or association that wishes to be designated as an approved sponsor of continuing education shall complete a Continuing Education Sponsor Application, and pay the provider fee established in 201 KAR 35:020, Section 8.

(2) An approved sponsor of continuing education shall be allowed to advertise the program as preapproved to meet the continuing education requirements for credential renewal.

(3)(a) Approval shall be for one (1) year from date of approval unless substantial course changes occur.

(b) For purposes of this section, a substantial course change shall be a change in the curriculum in excess of twenty (20) percent.

Section 6. Responsibilities and Reporting Requirements of Credential Holder; Audit. (1)(a)

During the renewal period, the board shall review at least fifteen (15) percent of all credential holders' documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

(b) Copies of supporting documentation submitted to the board shall be shredded and shall not be returned to the certificate holder upon completion of the audit process.

(c) Verification of continuing education hours shall not otherwise be reported to the board.

(2) A credential holder shall:

(a) Be responsible for obtaining the required continuing education hours;

(b) Identify personal continuing education needs and seek activities that meets those needs;

(c) Seek ways to integrate new knowledge, skills, and activities;

(d) Select approved activities by which to earn continuing education hours;

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as established in Section 3 of this administrative regulation;

(f) Document attendance, participation in, and successful completion of continuing education activity; and

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(g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity.

(3) The following items may be used to document continuing education activity:

- (a) Transcript;
- (b) Certificate;
- (c) Affidavit signed by the instructor;
- (d) Receipt for the fee paid to the sponsor; or
- (e) Written summary of experiences that are not formally or officially documented otherwise.

(4) Failure to comply with this administrative regulation shall constitute a violation of KRS 309.085(1)(b) and shall result in board:

- (a) Refusal to renew credential;
- (b) Suspension of credential; or
- (c) Revocation of credential.

Section 7. Carryover of Continuing Education Hours Prohibited. Continuing education hours earned in excess of those required pursuant to Section 1 of this administrative regulation shall not be carried forward.

Section 8. Waiver or Extensions of Continuing Education. (1) On application, the board may grant 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 or serious injury of the credential holder;
- (b) Serious illness of the credential holder or of 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 credential~~[certificate]~~ holder; and
- (b) Accompanied by a verifying document signed by a licensed physician or an advanced practice registered nurse.

(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 credential holder shall reapply for the waiver or extension.

Section 9. Continuing Education Requirements for Reinstatement or Reactivation of a Credential. (1) A person requesting reinstatement of certification as a certified alcohol and drug counselor or licensure shall:

(a) Submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or

(b) Obtain ~~thirty (30)~~ thirty (30) hours of continuing education within six (6) months of reinstatement of certification as a certified alcohol and drug counselor or licensure.

(2) Failure to obtain ~~thirty (30)~~ thirty (30) hours within six (6) months shall result in termination of certification or licensure.

(3) A person requesting reinstatement of certification as a certified alcohol and drug counselor associate I or certified alcohol and drug counselor associate II shall submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested.

(4) A person requesting reinstatement of a registration shall:

(a) Submit evidence of receiving thirty (30) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or

(b) Obtain ten (10) hours of continuing education within six (6) months of reinstatement of registration.

(4) Failure to obtain ten (10) hours within six (6) months shall result in termination of registration.

(5) A person requesting reactivation of registration, certification, or licensure shall submit evidence of receiving twenty (20) hours of continuing education within one (1) year immediately preceding the date that reactivation is requested. A minimum of ten

(10) hours shall be live synchronous or face-to-face continuing education presentations.

(6) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 1 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Education Sponsor Application Form", 2008; and

(b) "Continuing Education Program Application", June 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero Street, 2 SC 32, Frankfort, Kentucky, telephone (502) 782-8814, Monday through Friday, 8:30 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on April 26, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on April 26, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by April 26, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android: <https://us02web.zoom.us/j/83379565231?pwd=VUF1MThJYTZnbmA1WmxMZEt0RCtyZz09>, Password: 930689, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: KRS 309.0813(2) (effective March 1, 2021) requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A establishing continuing education for credential holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 309.0813(2) (effective March 1, 2021), by establishing continuing education for credential holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation currently assists in the effective administration of the statutes by establishing continuing education requirements for credential holders.

(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 change the existing administrative regulation by: (1) requiring each person holding a certificate as a certified alcohol and drug counselor associate I and a certified alcohol and drug counselor associate II to complete a minimum of thirty (30) continuing education hours, including at least six (6) continuing education hours in ethics each year; (2) allowing live synchronous continuing education presentations to count as in-person trainings; (3) adding Community Mental Health Centers to the list of preapproved continuing education providers; (4) allowing reinstatement of a certification as a certified alcohol and drug counselor or licensure by obtaining thirty (30) hours of continuing education within six (6) months of reinstatement; (5) requiring a person requesting reinstatement of certification as a certified alcohol and drug counselor associate I or II to submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; and (6) adding the board's Web site address.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish continuing education requirements for credential holders.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute, KRS 309.0813(2) (effective March 1, 2021), gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder. KRS 309.0841 (effective March 1, 2021) requires a certificate holder as a certified alcohol and drug counselor associate I, during the first twelve (12) months after initial licensure has been issued, to complete at least thirty (30) additional classroom hours of board-approved curriculum. KRS 309.0841 (effective March 1, 2021) requires a certificate holder as a certified alcohol and drug counselor associate II to have seventy (70) hours of approved classroom hours of board-approved curriculum of which twenty (20) hours shall have been obtained in the previous two (2) years.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing a continuing education requirement for all credential holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: A credential holder will be required to comply with the continuing education requirement or be subject to possible disciplinary action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The board is unable to determine how much it will cost each entity to comply with this amendment to the administrative regulation. Persons holding newly created credential will be required to obtain continuing education hours. Some programs cost money to attend.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, the credential holders will know the continuing education requirements expected of them by the

board.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no increases in fees or funding 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 did not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1) (effective March 1, 2021) requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(2) (effective March 1, 2021) requires the board to promulgate administrative regulations establishing continuing education for credential holders.

(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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**STATEMENT OF EMERGENCY
201 KAR 35:050E**

This emergency administrative regulation amendment is being promulgated to address an imminent threat to public health, safety, or welfare caused by the shortage of qualified counselors available to treat individuals during the current substance abuse crisis. Further, this emergency amendment is being promulgated to meet an imminent deadline imposed by state statute, namely SB 191. SB 191, signed by the Governor on April 24, 2020, and effective on March 1, 2021, amends KRS 309.080 to 309.089 to create two (2) additional credentials for drug and alcohol counseling. These credentials are administered and enforced by the Kentucky Board of Alcohol and Drug Counselors (“Board”). Among other things, KRS 309.0813, as amended by SB 191, requires the Board to promulgate administrative regulations to administer and enforce the new credentials. This statutory change required the amendment of nine (9) regulations and nineteen (19) forms. The Board has been diligently working on these regulatory amendments and forms, since the passage of SB 191. This emergency amendment will allow the Board to certify applicants for the two (2) new credentials created by SB 191 and regulate them in compliance with the statute effective March 1, 2021. An ordinary administrative regulation is not sufficient, because of the imminent effective date of SB 191. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

TIM CESARIO, Chair
ANDY BESHEAR, Governor

**BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Emergency Amendment)**

201 KAR 35:050E. Curriculum of study.

EFFECTIVE: March 5, 2021

RELATES TO: KRS 309.083(4), (8), 309.0841, 309.0842

STATUTORY AUTHORITY: KRS 309.0813(1), (5), (6), 309.083(4), 309.0831(4), 309.0832(3), 309.0833(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.083(4), 309.0831(4), 309.0832(3), [and] 309.0833(1), 309.0841, 309.0842 require the Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing curriculum requirements for applicants for a credential. This administrative regulation identifies the areas of study that will satisfy the requirement.

Section 1. (1) Registration. An applicant seeking registration as an alcohol and drug peer support specialist shall:

(a) Complete ~~forty (40)~~^{sixty (60)} classroom hours, which shall include:

1. Sixteen (16) hours of interactive training in ethics of which eight (8) hours shall consist of face-to-face training;
2. Three (3) hours of domestic violence training;
3. Two (2) hours of training in the transmission, control, treatment, and prevention of the human immunodeficiency virus;
4. Ten (10) hours of advocacy training;
5. Ten (10) hours of training in mentoring and education; and
6. Ten (10) hours of training in recovery support; and

(b) File with the board KBADC Form 5, Peer Support Specialist Alcohol/Drug Training Verification Form.

(2) Certification as a certified alcohol and drug counselor associate I.

(a) An applicant seeking certification as a certified alcohol and drug counselor associate I shall comply with the board-approved curriculum in KRS 309.0841; and

(b) File with the board KBADC Form 20, Certified Alcohol and Drug Counselor Associate I, Verification of Board-Approved Training.

(3) Certification as a certified alcohol and drug counselor

associate II. (a) An applicant seeking certification as a certified alcohol and drug counselor associate II shall comply with the board-approved curriculum requirements KRS 309.0842; and

(b) File with the board a KBADC Form 22, Certified Alcohol and Drug Counselor Associate II Verification of Classroom Training.

(4) Certification as an alcohol and drug counselor.

(a) An applicant seeking certification as an alcohol and drug counselor shall:

1. Complete ~~300~~²⁷⁰ classroom hours that are specifically related to the knowledge and skills necessary to perform the following alcohol and drug counselor competencies and shall include the following domains:

a. Screening assessment and engagement[Understanding addiction];

b. Treatment planning, collaboration, and referral[Treatment knowledge];

c. Counseling[Application to practice]; and

d. Professional and ethical responsibilities[Professional readiness];

e. Clinical evaluation;

f. Treatment planning;

g. Referral;

h. Service coordination;

i. Counseling;

j. Client, family, and community education;

k. Documentation; and

l. Professional and ethical responsibilities]; and

2. File with the board KBADC Form 10, Certified Alcohol and Drug Counselor[,] Verification of Classroom Training.

(b) A minimum of six (6) hours of the total ~~300~~²⁷⁰ hours shall be interactive, face-to-face ethics training relating to counseling.

(c) Two (2) hours of the total ~~300~~²⁷⁰ hours shall be specific to transmission, control, and treatment of the human immunodeficiency virus and other sexually transmitted diseases.

(d) Three (3) hours of the total ~~300~~²⁷⁰ hours shall be specific to domestic violence.

(5) ~~(3)~~ Licensure.

(a) An applicant seeking licensure as a licensed clinical alcohol and drug counselor or associate shall:

1. Complete 180 classroom hours of curriculum that are specifically related to the knowledge and skills necessary to perform the following alcohol and drug counselor competencies and shall include the following domains:

a. Screening assessment and engagement[Understanding addiction];

b. Treatment planning, collaboration, and referral[Treatment knowledge];

c. Counseling[Application to practice]; and

d. Professional and ethical responsibilities[Professional readiness];

e. Clinical evaluation;

f. Treatment planning;

g. Referral;

h. Service coordination;

i. Counseling;

j. Client, family, and community education;

k. Documentation; and

l. Professional and ethical responsibilities]; and

2. File with the board KBADC Form 11, Verification of Classroom Training.

(b) A minimum of six (6) hours of the total 180 hours shall be interactive, face-to-face ethics training relating to counseling.

(c) Two (2) hours of the total 180 hours shall be specific to transmission, control, and treatment of the human immunodeficiency virus and other sexually transmitted diseases.

(d) Three (3) hours of the total 180 hours shall be specific to domestic violence.

Section 2. (1) Attendance at conferences, workshops, seminars, or in-service training related to addictions shall be acceptable to meet the requirements of Section 1 of this administrative regulation if the board determines that the activity:

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- (a) Is an organized program of learning;
- (b) Covers an area listed in Section 1 of this administrative regulation; and
- (c) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

(2) One (1) semester hour of study from an accredited college or university credit shall equal fifteen (15) classroom hours.

(3) Publication on a subject relevant to addictions therapy may be submitted to the board. Credit shall be granted as established in this subsection.

(a) A chapter in a book shall be equivalent to ten (10) classroom hours.

(b) 1. Authoring or editing a book relevant to addictions therapy shall be given credit equivalent to thirty (30) classroom hours.

2. An applicant shall submit a copy of the title page, table of contents, and bibliography.

(c) 1. Publication in a professional refereed journal shall be equivalent to fifteen (15) classroom hours.

2. An applicant shall submit the journal table of contents and a copy of the article as it appeared in the journal including bibliography.

Section 3. (1) A list of courses the applicant wishes to have considered shall be organized by domains[~~score~~—area] as established in Section 1 of this administrative regulation and shall include documentation to verify that the course satisfies the requirements of that section.

(2) Appropriate documentation of the course shall include:

- (a) Date;
- (b) Title;
- (c) Description;
- (d) Sponsoring organization;
- (e) Presenter and presenter’s credentials;
- (f) Number of contact hours attended; and
- (g) Certificates of attendance or transcript.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) “KBADC Form 5, Peer Support Specialist Alcohol/Drug Training Verification Form”, March 2021[~~March 2017~~];

(b) “KBADC Form 10, Certified Alcohol and Drug Counselor Verification of Classroom Training”, March 2021[~~June 2015~~]; and

(c) “KBADC Form 11, Verification of Classroom Training”, March 2021[~~June 2015~~].

(d) “KBADC Form 20, Certified Alcohol and Drug Counselor Associate I, Verification of Board-Approved Training”, March 2021;

(e) “KBADC Form 21, Certified Alcohol and Drug Counselor Associate I, Verification of Board-Approved Training for First Twelve (12) Months After Initial Certification as Associate I”, March 2021;

(f) “KBADC Form 22, Certified Alcohol and Drug Counselor Associate II Verification of Board-Approved Curriculum”, March 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32[~~911 Leawood Drive~~], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. The board’s Web site address is: <https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on April 26, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on April 26, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by April 26, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android:

<https://us02web.zoom.us/j/83379565231?pwd=VUF1MThJYTZnbmA1WmxMZEt0RCtyZz09>, Password: 930689, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the required education for a credential holder.

(b) The necessity of this administrative regulation: The administrative regulation is necessary under: (1) KRS 309.083(4) (effective March 1, 2021), which requires applicants for certification as an alcohol and drug counselor to meet all education requirements of the International Certification and Reciprocity Consortium for the Alcohol and Drug Counselors (ADC); (2) KRS 309.0831(4) (effective March 1, 2021), which requires an applicant for registration as an alcohol and drug peer support specialist to have completed at least forty (40) classroom hours of board-approved curriculum; (3) KRS 309.0832(3) (effective March 1, 2021), which requires an applicant for licensure as a licensed alcohol and drug counselor to meet all education requirements of the International Certification and Reciprocity Consortium for the Advanced Alcohol and Drug Counselor (AADC); (4) KRS 309.0833(1)(b) (effective March 1, 2021), which requires an applicant for licensure as a licensed alcohol and drug counselor associate to meet all education requirements of the International Certification and Reciprocity Consortium for the Advanced Alcohol and Drug Counselor (AADC); (5) KRS 309.0841(1)(c), which requires an applicant for certification as a certified alcohol and drug counselor associate I to have completed forty (40) classroom hours of board-approved curriculum; and (6) KRS 309.0842(3), which requires an applicant for certification as a certified alcohol and drug counselor associate II to have seventy (70) hours of approved classroom hours of board-approved curriculum.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for education for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the educational requirements of a credential holder.

(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 change the existing administrative regulation in eight (8) ways: (1) reducing the number of hours from sixty (60) to forty (40) for an applicant seeking registration as an alcohol and drug peer support specialist; (2) requiring applicants for certification as a certified alcohol and drug counselor associate I to comply with the board-approved curriculum requirements of KRS 309.0841; (3) requiring applicants for certification as a

certified alcohol and drug counselor associate I to file a Form 19 to verify training; (4) requiring applicants for certification as a certified alcohol and drug counselor associate II to comply with the board-approved curriculum requirements of KRS 309.0842; (5) increasing the number of classroom hours for a certified alcohol and drug counselor from 270 to 300 to conform with the requirements of the International Certification and Reciprocity Consortium; (6) changing the twelve (12) core functions to four (4) domains for certified alcohol and drug counselor, licensed clinical alcohol and drug counselors and associates; (7) adding new forms to the materials incorporated by reference; and (8) adding the board's Web site address.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish a required education for a credential holder with a registration or license issued by the board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for education for a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing an education requirement for all credential holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: A credential holder will be required to comply with the education requirement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no new cost associated to the amendment related to the amendment of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: The credential holders will know the education requirements expected of them by the board.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation

does not distinguish between similarly situated individuals on the basis of any factor.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (5), and (6), 309.083, 309.0831, 309.0832, 309.0833, 309.0841, 309.0842.

(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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

STATEMENT OF EMERGENCY 201 KAR 35:055E

This emergency administrative regulation amendment is being promulgated to address an imminent threat to public health, safety, or welfare caused by the shortage of qualified counselors available to treat individuals during the current substance abuse crisis. Further, this emergency amendment is being promulgated to meet an imminent deadline imposed by state statute, namely SB 191. SB 191, signed by the Governor on April 24, 2020, and effective on March 1, 2021, amends KRS 309.080 to 309.089 to create two (2) additional credentials for drug and alcohol counseling. These credentials are administered and enforced by the Kentucky Board of Alcohol and Drug Counselors ("Board"). Among other things, KRS 309.0813, as amended by SB 191, requires the Board to promulgate administrative regulations to administer and enforce the new credentials. This statutory change required the amendment of nine (9) regulations and nineteen (19) forms. The Board has been diligently working on these regulatory amendments and forms, since the passage of SB 191. This emergency amendment will allow the Board to certify applicants for the two (2) new credentials created by SB 191 and regulate them in compliance with the statute effective March 1, 2021. An ordinary administrative regulation is not sufficient, because of the imminent effective date of SB 191. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

TIM CESARIO, Chair

ANDY BESHEAR, Governor

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Emergency Amendment)

201 KAR 35:055E. Temporary registration or certification.

EFFECTIVE: March 5, 2021

RELATES TO: KRS 309.083, 309.0831

STATUTORY AUTHORITY: KRS 309.0813(1), (5), 309.083, 309.0831

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) and (5) authorize the board to promulgate administrative regulations establishing the requirements for registering with the Board of Alcohol and Drug Counselors as a registered alcohol and drug peer support specialist, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor. This administrative regulation establishes the requirements for temporary credentials.

Section 1. Application for Temporary Registration. (1) An applicant for temporary registration as a certified alcohol and drug peer support specialist may submit an application after the requirements established in KRS 309.0831(1), (2), (6), (7), and (10) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed KBADC Form 1, incorporated by reference in 201 KAR 35:020. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and
2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);
2. Proof of a high school diploma or equivalent;
3. A signed agreement to abide by the standards of practice and code of ethics approved by the board;
4. KBADC Form 2, Attestation of Recovery, in which the applicant declares that he or she has been in recovery for a minimum of one (1)~~two (2)~~ years from a substance-related disorder; and
5. A supervision agreement signed by the applicant and the applicant's supervisor.

Section 2. Application for Temporary Certification. (1) An applicant for temporary certification as a certified alcohol and drug counselor may submit KBADC Form 1, incorporated by reference in 201 KAR 35:020, after the requirements established in KRS 309.083(1), (2), (6), (7), and (10) are met.

(2) The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and
2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);
2. An official transcript for the highest level~~[all levels]~~ of education required for certification;
3. A signed agreement to abide by the standards of practice and code of ethics approved by the board; and
4. A supervision agreement signed by the applicant and the applicant's supervisor.]

Section 3. Period of Temporary Registration~~[Credential]~~. (1) The period of a temporary registration~~[credential]~~ shall be terminated

upon the passage of two (2) years from issuance.

Section 4. Period of Temporary Certification. (1) The period of temporary certification shall be terminated upon the passage of two (2) years from issuance.

(2) The board may approve an extension of the period of a temporary certification ~~[credential]~~ for a maximum of two (2) years if a:

(a) Written request is submitted that is cosigned by the board approved supervisor; and

(b) One (1) of the following exists:

1. A circumstance delineated in 201 KAR 35:040, Section 8(1); or

2. The temporary certified alcohol and drug counselor~~[credential holder]~~ presents evidence of insufficient time to:

- a. Complete supervision, training, or work experience; or
- b. Successfully pass the required examination.

(3) The board shall not grant more than three (3)~~two (2)~~ extensions of the period of a temporary certification~~[credential]~~.

Section 5~~[4]~~. Incorporation by Reference. (1) "KBADC Form 2, Attestation of Recovery", March 2021~~[June 2015]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Alcohol and Drug Counselors, 500 Mero St. 2 SC 32~~[911 Leewood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held at 9:00 AM on April A public hearing on this administrative regulation shall be held at 9:00 AM on April 26, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on April 26, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by April 26, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android: <https://us02web.zoom.us/j/83379565231?pwd=VUF1MThJYTZnbm41WmxMZEt0RCtyZz09>, Password: 930689, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application process for an

individual to obtain a temporary registration or certification.

(b) The necessity of this administrative regulation: The necessity of this regulation is to provide the board with regulatory control of those individuals who are engaged in peer support services or alcohol and drug counseling prior to full credentialing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for obtaining registration or certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the application process for an individual to obtain a temporary registration or certification

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by: (1) replacing the requirement that an applicant for registration as a temporary registered alcohol and drug support specialist attest to two (2) years of recovery from a substance-abuse disorder with one (1) year; (2) replacing requirement that applicant provide transcripts of all levels of education with the highest level of education; (3) making the period of temporary certification two (2) years; (4) clarifying that a credential holder in Section 4 is a temporary certified alcohol and drug counselor; (4) replacing requirement that the board not grant more than two (2) extensions of the period of temporary certification with three (3); (5) updating the board's address; and (6) adding the board's Web site address.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to legislative changes to KRS 309.0831(7) (effective March 1, 2021) and to allow temporary certificate holders additional time to complete requirements for certification.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes. KRS 309.0831(7) (effective March 1, 2021) requires an applicant for registration as an alcohol and drug peer support specialist to attest to being in recovery for a minimum of one (1) year from a substance-related disorder. Prior to March 1, 2021, KRS 309.0831 required an applicant be in recovery for two (2) years. The amendment also conforms to KRS 309.0813(1) and (5) (effective March 1, 2021), which requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A to define the process to register with the board as registered alcohol and drug peer support specialist and a certified alcohol and drug counselor.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assist in the effective administration of statutes by clearly defining for applicants the process for registration and certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: An individual can obtain a credential during the period the applicant is fulfilling the supervision requirement and course work requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Licensees and permit holders will have no cost associated with the amendment. The applicant will have to pay a fee to apply for the temporary credential.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, an individual has a credential during the period the applicant is fulfilling the supervision requirement and course work requirements.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments to this administrative regulation. The fees for the temporary credentials are listed in 201 KAR 35:020.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1) and (5), 309.083, 309.0831.

(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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**STATEMENT OF EMERGENCY
201 KAR 35:070E**

This emergency administrative regulation amendment is being promulgated to address an imminent threat to public health, safety, or welfare caused by the shortage of qualified counselors available to treat individuals during the current substance abuse crisis. Further, this emergency amendment is being promulgated to meet an imminent deadline imposed by state statute, namely SB 191. SB 191, signed by the Governor on April 24, 2020, and effective on March 1, 2021, amends KRS 309.080 to 309.089 to create two (2) additional credentials for drug and alcohol counseling. These credentials are administered and enforced by the Kentucky Board of Alcohol and Drug Counselors (“Board”). Among other things, KRS 309.0813, as amended by SB 191, requires the Board to promulgate administrative regulations to administer and enforce the new credentials. This statutory change required the amendment of nine (9) regulations and nineteen (19) forms. The Board has been diligently working on these regulatory amendments and forms, since the passage of SB 191. This emergency amendment will allow the Board to certify applicants for the two (2) new credentials created by SB 191 and regulate them in compliance with the statute effective March 1, 2021. An ordinary administrative regulation is not sufficient, because of the imminent effective date of SB 191. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

TIM CESARIO, Chair
ANDY BESHEAR, Governor

**BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Emergency Amendment)**

201 KAR 35:070E. Supervision experience.

EFFECTIVE: March 5, 2021

RELATES TO: KRS 309.0814, 309.083(4), 309.0831, 309.0832, 309.0833, 309.0841, 309.0842

STATUTORY AUTHORITY: KRS 309.0813(1), (3), (5), 309.0814(1), 309.083(3), 309.0831(3), 309.0832(10), 309.0833(2), 309.086

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be credentialed. This administrative regulation establishes the standards for the accumulation of required supervised work experience.

Section 1. (1)(a) Peer Support Specialist Supervision. Peer support specialist supervision shall continue throughout the period of registration. The supervision shall include the four (4) following domains:

1. Advocacy;
2. Ethical Responsibility;
3. Mentoring and Education; and
4. Recovery and Wellness Support.

(b) A supervisor of a peer support specialist shall complete and submit KBADC Form 8, Peer Support Specialist Verification of Supervision, that documents the twenty-five (25) hours of direct supervision.

(2) Clinical Supervision for Certification and Licensure Applicants. Clinical supervision shall ~~consist of at least 300 hours and shall~~ include a minimum of ten (10) hours in each of the following ~~four (4) domains[twelve (12) core functions]:~~

- (a) ~~Screening assessment and engagement[Screening];~~
- (b) ~~Treatment planning, collaboration, and referral[Intake];~~
- (c) ~~Counseling; and[Client orientation];~~
- (d) ~~Professional and ethical responsibilities[Assessment];~~
- (e) ~~Treatment planning;~~

- (f) Counseling;
- (g) Case management;
- (h) Crisis intervention;
- (i) Client education;
- (j) Referral;
- (k) Reports and recordkeeping; and
- (l) Consultation].

(3) Clinical supervision shall meet the minimum requirements of the following:

(a) For applicants with a high school diploma or high school equivalency diploma requires 300 hours of clinical supervision with a minimum of ten (10) hours in each domain listed in subsection (2);

(b) For applicants with an associate’s degree in a relevant field requires 250 hours of clinical supervision with a minimum of ten (10) hours in each domain;

(c) For applicants with a bachelor’s degree in a relevant field requires 200 hours of clinical supervision with a minimum of ten (10) hours in each domain; and

(d) For applicants with an master’s degree or higher in a relevant field requires 100 hours of clinical supervision with a minimum of ten (10) hours in each domain.

(4)(a) Clinical supervision may occur in individual or in group settings.

(b) The methods of clinical supervision include:

1. Face-to-face;
2. Video conferencing; or
3. Teleconferencing. [

~~(4) A minimum of 200 hours of clinical supervision shall be conducted face-to-face in an individual or group setting.]~~

(5) Supervision that exceeds two (2) hours in a single day shall be accompanied by a written explanation justifying the length of supervision exceeding two (2) hours.

(6) Clinical supervisors shall complete and submit KBADC Form 13, Verification of Clinical Supervision, which documents the ~~required[300]~~ hours of supervision that has occurred during the work experience, in the Application for Certification as an Alcohol and Drug Counselor, Application for Licensure as a Clinical Alcohol and Drug Counselor Associate, or Application for Licensure as a Clinical Alcohol and Drug Counselor, which are incorporated by reference in 201 KAR 35:020 .

(7)[(6)] For applicants applying for licensure who already possess a certified alcohol and drug counselor credential[if the applicant qualifies for licensure], supervision obtained under KRS 309.083 prior to February 5, 2016 shall be calculated toward the 100[300] hour supervision requirement under KRS 309.0832(3)[(10)] and Section (3)(d) of this regulation .

Section 2. Except as provided by Section 1(6) of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee submitting a Supervisory Agreement to the board. The supervisor and supervisee shall also submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change unless extenuating circumstances prevent the submission ~~[the thirty (30) day requirement]~~.

Section 3. (1) All supervision requirements shall:

(a) Be met with face-to-face individual or group weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Sections 13 and 14 of this administrative regulation;

(b) Consist of not less than two (2) hours, two (2) times a month in the practice of alcohol and drug counseling; and

(c) Include additional supervision sessions, as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board for certain types of circumstances, such as distance, weather, or serious injury or illness of the supervisor or supervisee.

(3) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board

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for approval. This plan may require additional hours of supervision than was previously approved by the board.

(4) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board within thirty (30) days of the termination.

Section 4. (1)(a) A certified alcohol and drug counselor or licensed clinical alcohol drug counselor shall submit a Form 4, Request to Provide Supervision, to become approved by the board to provide supervision.

(b) A certified alcohol and drug counselor who has at least two (2) years of post-certification experience, including Alcohol and Drug Counselor credentials transferred through reciprocity, and has attended the board-sponsored supervision training may be approved by the board to provide supervision~~or licensed clinical alcohol and drug counselor who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.~~

(c) A licensed clinical alcohol and drug counselor who has at least twelve (12) months of post-licensure experience, including Advanced Alcohol and Drug Counselor credentials transferred through reciprocity, or has attended the board-sponsored supervision training.

(2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours in supervision theory or techniques in each three (3) year renewal cycle. The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

(3) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor shall not be the supervisor of record for more than twenty-five (25)~~twelve (12)~~ supervisees.

(4) A licensed clinical alcohol and drug counselor associate shall only be supervised by a licensed clinical alcohol and drug counselor.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 309.086 on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise or in the ability of a supervisee to function in the practice of alcohol and drug counseling in a competent manner.

(4) The supervisor shall control, direct, or limit the supervisee's practice to insure that the supervisee's practice of alcohol and drug counseling is competent.

(5) The supervisor of record shall be responsible for the practice of alcohol and drug counseling or peer support services provided by the supervisee. If the board receives a complaint~~initiates an investigation~~ concerning a supervisee, the board shall notify the supervisor of record~~investigation shall include the supervisor of record~~.

(6) For each certificate or license holder~~person~~ supervised, the supervisor shall maintain a KBADC Form 13, Verification of Clinical Supervision, for each supervisory session that shall include the domain covered, date of session, length of session, and method of supervision~~type, place, and general content~~ of the session. For each registrant supervised, the supervisor shall maintain a KBADC Form 8, Peer Support Specialists Verification of Supervision Form, for each supervisory session that shall include the date, length, method, and domain covered during the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. (1) The supervisor of record shall submit the Supervisor Log for each supervisee to the board on an annual basis with a KBADC Form 14, Supervision Annual Report or as directed otherwise by the board.

(2) The report shall include:

(a) A description of the frequency, format, and duration of supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and

(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to each other.

(2) A request to have more than two (2) supervisors at one (1) time shall require a written request to the board, which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed clinical alcohol and drug counselor associate, ~~or an applicant for a certificate as a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, or certified alcohol and drug counselor associate II,~~ the supervisor of record shall:

(1) Review all alcohol and drug assessments and treatment plans;

(2) Review progress notes and correspondence on a regular basis to assess the competency of the supervisee to render alcohol and drug services;

(3) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:

(a) Be updated and revised, as needed, and submitted to the board annually;

(b) Include intended format and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(4) At least semi-annually, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror, or as a cotherapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee;

(8) Have knowledge of the supervisee's physical and emotional well-being if it has a direct bearing on the supervisee's competence to practice; and

(9) Submit a completed KBADC Form 7, Supervision Evaluation, within thirty (30) days of termination of a ~~peer support special~~ supervisory agreement.

Section 9. If the supervisee is a peer support specialist, the supervisor of record shall:

(1) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:

(a) Be updated and revised, as needed, and submitted to the board annually;

(b) Include intended format and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(2) Review and countersign all peer recovery service plans;

(3) Review peer recovery notes and correspondence on an as-needed basis to assess the competency of the supervisee to render peer recovery services;

(4) At least once every two (2) months, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or direct observation;

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(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;

(7) Have knowledge of the methods and techniques being used by the supervisee;

(8) Have knowledge of the supervisee's physical and emotional well-being if it has a direct bearing on the supervisee's competence to practice; and

(9) Submit a completed KBADC Form 9, Supervision Evaluation for Peer Support Specialist, within thirty (30) days of termination of a peer support special supervisory agreement.

Section 10. (1) The supervisee shall:

(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and

(b) Seek consultation from the supervisor, as needed, in accordance to a regularly-scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(b) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board, in accordance with the reporting schedule established in Section 6(1) of this administrative regulation; and

(c) Report to the board an apparent violation on the part of the supervisor.

(3) Except as provided in Section 11 of this administrative regulation, a supervisee shall not continue to practice alcohol and drug counseling or peer support services if:

(a) The conditions for supervision set forth in the supervisory agreement are not followed;

(b) There is a death or serious illness of the board-approved supervisor that results in the supervisor not being able to provide supervision; or

(c) The supervisory agreement is terminated by the board, the board-approved supervisor, or the supervisee for any reason other than the extenuating circumstances that allow temporary supervision in Section 11 of this administrative regulation.

Section 11. Temporary Supervision. (1) In extenuating circumstances, if a supervisee is without supervision, the supervisee may continue working up to sixty (60) calendar days under the supervision of a qualified mental health provider as defined by KRS 202A.011(12), a certified alcohol and drug counselor, or a licensed clinical alcohol and drug counselor while an appropriate board-approved supervisor is sought and a new supervisory agreement is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, the termination of the supervisor's employment, or termination of the supervisory agreement except for a violation of KRS 309.080 to 309.089, or 201 KAR Chapter 35.

(2)(a) Within ten (10) days of the establishment of the temporary supervisory arrangement, the supervisee shall notify the board of the extenuating circumstances that have caused the supervisee to require temporary supervision.

(b) The supervisee shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the establishment of the temporary supervisory arrangement.

(c) The written plan shall include:

1. The name of the temporary supervisor;

2. Verification of the credential held by the temporary supervisor;

3. An email address and a postal address for the temporary supervisor and the supervisee; and

4. A telephone number for the temporary supervisor.

(3) The temporary supervisory arrangement shall expire after sixty (60) days of the establishment of the temporary supervisory arrangement.

(4) To avoid the expiration of a temporary supervisory arrangement:

(a) A temporary alcohol and drug counselor shall submit a

completed KBADC Form 3, Supervisory Agreement; or

(b) A peer support specialist shall submit a completed KBADC Form 6, Peer Support Specialist Supervisory Agreement.

Section 12. Identification of Provider and Supervisor of Record. The actual deliverer of a service shall be identified to the client, and the client shall be informed of the deliverer's credential and name of supervisor of record. [~~A billing for a rendered service shall identify which service was performed by the registered alcohol and drug peer support specialist, applicant as a certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or other provider who is supervised by the board approved supervisor of record.]~~

Section 13. Supervision of a Disciplined Credential Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined credential holder for the period of time defined by the board and a member of the board to serve as a liaison between the board and the appointed supervisor.

(2) The disciplined credential holder shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board-~~sponsored~~approved training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined credential holder and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision approved by the board; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined credential holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to insure that the disciplined credential holder's practice is in compliance with KRS 309.080 to 309.089, and 201 KAR Chapter 35;

(f) Report to the board any apparent violation on the part of the disciplined credential holder;

(g) Immediately report to the board in writing a change in the ability to supervise, or in the ability of the disciplined credential holder to function in the practice of peer recovery support or the practice of alcohol and drug~~[substance use disorders]~~ counseling in a competent manner;

(h) Review and countersign assessments, as needed or appropriate;

(i) Review and countersign service or treatment plans, as needed or appropriate;

(j) Have direct observation of the disciplined credential holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined credential holder's caseload;

(l) Have knowledge of the therapeutic methods, modalities, or techniques being used by the disciplined credential holder; and

(m) Have knowledge of the disciplined credential holder's physical and emotional well-being if it has a direct bearing on the disciplined credential holder's competence to practice.

(5) The supervisor shall control, direct, or limit the disciplined credential holder's practice to ensure that the disciplined credential holder's practice is competent.

(6) The supervisor shall contact the board liaison with any concern or problem with the disciplined credential holder, his or her practice, or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined

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credential holder, and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14. ~~Graduate Students in Programs Emphasizing Substance Use Disorders Counseling. Graduate-level students in programs that emphasize alcohol and drug counseling who are providing services in health care settings that provide alcohol and drug counseling including independent practice settings shall:~~

- ~~(1) Be supervised by a licensed clinical alcohol and drug counselor or certified alcohol and drug counselor;~~
- ~~(2) Be registered for practicum credit on the transcript in his or her course of study;~~
- ~~(3) Clearly identify their status as unlicensed trainees in the field of alcohol and drug counseling to all clients and payors;~~
- ~~(4) Give to all clients and payors the name of the supervising licensed clinical alcohol and drug counselor or certified alcohol and drug counselor responsible for the student's work; and~~
- ~~(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a certificate or license from the board.~~

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KBADC Form 3, Supervisory Agreement", March 2021~~[June 2015]~~;
- (b) "KBADC Form 4, Request~~[ReQuest]~~ to Provide Supervision", March 2021~~[June 2015]~~;
- (c) "KBADC Form 6, Peer Support Specialist Supervisory Agreement", March 2021~~[June 2015]~~;
- (d) "KBADC Form 7, Supervision Evaluation", March 2021~~[June 2015]~~;
- (e) "KBADC Form 8, Peer Support Specialist Verification of Supervision", March 2021~~[June 2015]~~;
- (f) "KBADC Form 9, Supervision Evaluation for Peer Support Specialist", March 2021~~[September 2017]~~;
- (g) "KBADC Form 13, Verification of Clinical Supervision", March 2021~~[June 2015]~~; and
- (h) "KBADC Form 14, Supervision Annual Report", March 2021~~[June 2015]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32~~[911 Leewood Drive]~~, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on April 26, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on April 26, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by April 26, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android: <https://us02web.zoom.us/j/83379565231?pwd=VUF1MTJhYTZnbm41WmxMZEt0RCtyZz09>, Password: 930689, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, Address: 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to obtain supervision for registration, certification, and licensure.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure to obtain supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.

(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 change the existing administrative regulation by: (1) removing the 300-hour requirement for supervision for clinical supervision; (2) deleting the twelve (12) core functions; (3) replacing the twelve (12) core functions with the four (4) domains; (4) clarifying how much supervision is needed based on high level of education obtained; (5) stating that supervision that exceeds two (2) hours in a single day shall be accompanied by a written explanation justifying the length of supervision; (6) clarifying that only applicants who currently possession a certification as a certified alcohol and drug counselor can apply supervision received prior to February 5, 2016 to the required hours of supervision; (7) updating the requirements to become a supervisor to conform with KRS 309.083(3) (effective March 1, 2021), 309.0831(3) (effective March 1, 2021), 309.0842 (effective March 1, 2021), and 309.085 (effective March 1, 2021); (8) increasing the number of supervisees a supervisor may have from twelve (12) to twenty-five (25); (9) requiring that a supervisee's supervisor receive a copy of any complaint filed against a supervisee; (10) adding requirements to the supervision forms; (11) adding the two new credential to the list of those who need supervision; (12) deleting language regarding billing from Section 12; (13) deleting language dealing with graduate students as outside the scope of the board's authority; (14) updating the board's address; and (15) adding the board's Web site address.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to expand since new credentials have been established in the last legislative session and provide the board with more oversight of the supervision process of an applicant or licensee.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the

exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: In order to comply with this regulation, supervisees will have to obtain a supervisor and record their hours of supervision. Supervisors will have to apply with the board to become a supervisor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: In complying with this administrative regulation, some applicants will have to attend training to become a supervisor, this may incur a cost. Most supervisees have to pay their supervisor for supervision.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, the credential holders and applicants will be able to document the supervision received and provide the board with more oversight during the supervision process.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (3), (5). 309.083, 309.0831, 309.0832, 309.0833, 309.0841, 309.0842.

(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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

STATEMENT OF EMERGENCY
201 KAR 35:075E

This emergency administrative regulation amendment is being promulgated to address an imminent threat to public health, safety, or welfare caused by the shortage of qualified counselors available to treat individuals during the current substance abuse crisis. Further, this emergency amendment is being promulgated to meet an imminent deadline imposed by state statute, namely SB 191. SB 191, signed by the Governor on April 24, 2020, and effective on March 1, 2021, amends KRS 309.080 to 309.089 to create two (2) additional credentials for drug and alcohol counseling. These credentials are administered and enforced by the Kentucky Board of Alcohol and Drug Counselors ("Board"). Among other things, KRS 309.0813, as amended by SB 191, requires the Board to promulgate administrative regulations to administer and enforce the new credentials. This statutory change required the amendment of nine (9) regulations and nineteen (19) forms. The Board has been diligently working on these regulatory amendments and forms, since the passage of SB 191. This emergency amendment will allow the Board to certify applicants for the two (2) new credentials created by SB 191 and regulate them in compliance with the statute effective March 1, 2021. An ordinary administrative regulation is not sufficient, because of the imminent effective date of SB 191. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

TIM CESARIO, Chair
ANDY BESHEAR, Governor

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Emergency Amendment)

201 KAR 35:075E. Substitution for work experience for an applicant for certification as an alcohol and drug counselor.

EFFECTIVE: March 5, 2021
RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833
STATUTORY AUTHORITY: KRS 309.0813(1), (3), (5), 309.083, 309.0831, 309.0832, 309.0833
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) authorizes the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.083, 309.0831, 309.0832, [and] 309.0833, 309.0841, and 309.0842 establish the standards for the accumulation of the required supervised work experience. This administrative regulation establishes the requirements for substituting education for work experience requirements for an

applicant for certification as an alcohol and drug counselor.

Section 1. Substitution for Work Experience for an Applicant for Certification as an Alcohol and Drug Counselor under KRS 309.083.

(1) An applicant may substitute, for part of the work experience, a degree in a related field such as:

- (a) Addictions;
- (b) Counseling;
- (c) Psychology;
- (d) Psychiatric nursing; or
- (e) Social work.

(2) An applicant may request to substitute an educational degree for part of the required work experience by submitting KBADC Form 12, Workplace Experience Substitution Request, to the board along with transcripts from an accredited college or university.

(3) Educational substitution shall be reviewed and approved by the board based upon education relative to the delivery of alcohol and other drug counseling.

(a) A master's degree or higher in a related field, with a specialization in addictions or drug and alcohol counseling, may be substituted for 4,000 hours of work experience.

(b) A master's degree or higher in a related field, without the specialization in paragraph (a) of this subsection, may be substituted for 3,000 hours of work experience.

(c) A bachelor's degree in a related field may be substituted for 2,000 hours of work experience.

(d) A bachelor's degree in an unrelated field shall not qualify for a substitution of hours, and the applicant shall provide proof of 6,000 hours of work experience as established in KRS 309.083(3).

(4) The hours of work experience shall be documented on the candidate's application for certification and shall contain verification by the supervisor.

Section 2. Incorporation by Reference. (1) "KBADC Form 12, Workplace Experience Substitution Request", March 2021~~[June 2015]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32~~[911 Leewood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on April 26, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on April 26, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by April 26, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android: <https://us02web.zoom.us/j/83379565231?pwd=VUF1MThJYTZnbm01WmxMZEt0RCtyZz09>, Password: 930689, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to

the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes what is considered qualified the work experience that may be substituted for actual alcohol and drug counseling work experience required to be credentialed by the board.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the work experience required to be credentialed by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for work experience required to be credentialed by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist an applicant and board to understand the work experience required to be credentialed by the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by clarifying that this regulation only applies to applicants for certification as a certified alcohol and drug counselor under KRS 309.083 and no other certificate holders.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify that new credentials created last legislative session do not fall under this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute because the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for work experience required to be credentialed by the board.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by clearly identifying who can substitute work experience.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: Certified alcohol and drug counselors who want to substitute work place experience will fill out the proper form and submit it to the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no new cost associated to the amendment related to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: A credential holder has knowledge of the required work experience as set out in the statute for each credential.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (3), (5). 309.083, 309.0831, 309.0832, and 309.0833.

(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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

STATEMENT OF EMERGENCY
201 KAR 35:080E

This emergency administrative regulation amendment is being promulgated to address an imminent threat to public health, safety, or welfare caused by the shortage of qualified counselors available to treat individuals during the current substance abuse crisis.

Further, this emergency amendment is being promulgated to meet an imminent deadline imposed by state statute, namely SB 191. SB 191, signed by the Governor on April 24, 2020, and effective on March 1, 2021, amends KRS 309.080 to 309.089 to create two (2) additional credentials for drug and alcohol counseling. These credentials are administered and enforced by the Kentucky Board of Alcohol and Drug Counselors ("Board"). Among other things, KRS 309.0813, as amended by SB 191, requires the Board to promulgate administrative regulations to administer and enforce the new credentials. This statutory change required the amendment of nine (9) regulations and nineteen (19) forms. The Board has been diligently working on these regulatory amendments and forms, since the passage of SB 191. This emergency amendment will allow the Board to certify applicants for the two (2) new credentials created by SB 191 and regulate them in compliance with the statute effective March 1, 2021. An ordinary administrative regulation is not sufficient, because of the imminent effective date of SB 191. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency regulation.

TIM CESARIO, Chair
ANDY BESHEAR, Governor

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Emergency Amendment)

201 KAR 35:080E. Voluntary inactive and retired status.

EFFECTIVE: March 5, 2021

RELATES TO: KRS 309.0813(5) and (12)

STATUTORY AUTHORITY: KRS 309.0813(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(5) requires the board to promulgate administrative regulations to define the process to register with the board as a registered alcohol and drug peer support specialist, certified alcohol and drug counselor associate I, certified alcohol and drug counselor associate II, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor. KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. This administrative regulation allows credential holders to place their credentials in voluntary inactive status or retired for a period of time if they do not intend to actively practice alcohol and drug counseling or alcohol and drug peer support services in the Commonwealth of Kentucky

Section 1. Conditions for Application for Voluntary Inactive Status. (1) Voluntary inactive status shall be for the credential holder who is currently not working as a peer support specialist or an alcohol and drug counselor, yet plans to return to providing peer support services or alcohol and drug counseling.

(2) The Kentucky Board of Alcohol and Drug Counselors shall grant inactive status if one (1) or more of the following conditions apply:

- (a) Medical problems;
- (b) Maternity or paternity;
- (c) Education;
- (d) Military service; or
- (e) Family or personal issues.

Section 2. Instructions for Application for Voluntary Inactive Status. (1) A credential holder, including a temporary credential holder, desiring inactive status shall send a letter of request to the office of the Kentucky Board of Alcohol and Drug Counselors and include the following information:

- (a) Current home address and telephone number;
- (b) Reason for request;
- (c) Final date of employment providing peer support services or [in the] alcohol and drug counseling [field];

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(d) Final date of supervision:

(e) Anticipated date of return to employment providing peer support services or~~[in the]~~ alcohol and drug counseling~~[field]~~; and

(e) Nonrefundable enrollment fee of fifty (50) dollars as established in 201 KAR 35:020, Section 7.

(2) The request for voluntary inactive status shall be placed on the agenda of the next regularly-scheduled meeting of the Kentucky Board of Alcohol and Drug Counselors for consideration.

(3) The applicant shall be notified of the board's decision no later than two (2) weeks after the board's meeting.

Section 3. Terms and Responsibilities. (1) While on voluntary inactive status, an individual shall continue to receive bulletins, newsletters, and other communications from the Kentucky Board of Alcohol and Drug Counselors.

(2) A counselor on voluntary inactive status shall not practice or use the title or initials of a counselor such as, TCADC, Associate I, Associate II, CADC, LCADCA, or LCADC.

(3) A peer support specialist on voluntary inactive status shall not practice or use the initials or title of a registered peer support specialist such as, TRADPSS or RADPSS[RPSS].

(4) Individuals on voluntary inactive status shall not be eligible for reciprocity.

(5) Individuals on voluntary inactive status shall comply with the Kentucky Code of Ethics as established in 201 KAR 35:030.

(6) The voluntarily inactive individual shall notify the Kentucky Board of Alcohol and Drug Counselors prior to returning to work providing peer support services or~~[in the]~~ alcohol and drug counseling ~~[field]~~ and pay the reactivation fee established in 201 KAR 35:020, Section 7.

(7) Failure to notify the board prior to returning to employment shall constitute a violation of the Kentucky Board of Alcohol and Drug Counselors Code of Ethics in 201 KAR 35:030, and shall result in referral to the board for investigation, in accordance with the procedures outlined in 201 KAR Chapter 35.

(8) A credential holder may remain on inactive status for two (2) years, unless an extension of time is granted.

(9) The two (2) year period of inactive status shall begin when the board grants the request for inactive status.

(10) A credential holder may request one (1) extension of time of two (2) years by submitting to the board a written request to continue on inactive status and an explanation of the reason for the request.

(11) If the credential holder does not submit a request for extension of the inactive status or fails to reactivate the credential before the end of the inactive status, the credential shall expire.

Section 4. Reactivation. (1) Individuals requesting reactivation of their registration, certification, or licensure status shall send a letter of request to the office of the Kentucky Board of Alcohol and Drug Counselors and shall include the following:

- (a) Current home address;
- (b) Current e-mail address;
- (c) Description of change of circumstances allowing active participation in the field;
- (d) Address of employing agency, if applicable;
- (e) Submission of proof of attendance of continuing education as required by 201 KAR 35:040; and
- (f) Nonrefundable reactivation fee as established in 201 KAR 35:020, Section 7(3).

(2)(a) A request for reactivation shall be considered at the next regularly scheduled meeting of the Kentucky Board of Alcohol and Drug Counselors.

(b) The applicant shall be notified within two (2) weeks of the board's decision.

Section 5. Conditions for Retired Status. (1) Except for an individual issued a temporary registration or certification, a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, or a license as a clinical alcohol and drug counselor associate, retired status may be granted to a credential holder upon written request to the board.

(2) The board may grant retired status to a credential holder

submitting a written request if that individual:

(a) ~~Suffers~~~~[is at least sixty-five (65) years old, or suffers]~~ a ~~physical or mental~~~~[medical]~~ disability or illness that renders the credential holder unable to provide peer support services or practice alcohol and drug counseling; ~~or~~~~[and]~~

(b) Has retired from providing peer support services or the practice of alcohol and drug counseling in all jurisdictions and is not conducting an active practice in any jurisdiction.

(3) A credential holder granted retired status by the board shall:

(a) Not be required to meet the continuing education requirements under 201 KAR 35:030;

(b) Be relieved of the obligation to pay the renewal and penalty fees under 201 KAR 35:020, Section 4 and the inactive status fees under 201 KAR 35:020, Section 7; and

(c) Use the designation "-R" at the end of the acronym for the appropriate credential such as, RADPSS-R[RPSS-R], CADC-R, or LCADC-R.

(4) A credential holder who retires and later seeks reinstatement shall meet applicable current initial registration, certification, or licensure requirements as provided in KRS 309.083 through 309.0833, 201 KAR 35:025, 35:050, and 35:070.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on April 26, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on April 26, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by April 26, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android: <https://us02web.zoom.us/j/83379565231?pwd=VUF1MThJYTZnbmA1WmxMZEt0RCtyZz09>, Password: 930689, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, ss: 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email Kevin.R.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for a credential holder who voluntarily places oneself on inactive or retired status.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish procedure for the board to be aware of the credential holders who voluntarily places oneself on inactive or retired status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations to register with the board as a credential holder.

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(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in board having knowledge of credential holders who are not currently practicing.

(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 change the existing administrative regulation by: (1) allowing temporary credential holders to place their credential on inactive status; (2) requiring peer support specialist who place their credential on voluntary inactive status to state their final date of supervision; (3) add the enrollment fee of fifty (50) dollars to the text of the regulation; (4) notify credential holders that they cannot use their title or an acronym if they are in inactive status; (5) clarifying that registered alcohol and drug support specialist only provide peer support services; (6) setting a time limit of two (2) years to remain on inactive status; (7) establishing that the two (2) year period begins when the board grants the request; (8) allowing a credential holder to request an extension of inactive status; (9) explaining that a credential will expire if a request for extension is not timely filed; (10) allowing credential created last legislative session to apply for retired status; (11) removing the age requirement for retired status; and (12) correcting the RADPSS acronym.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow credentials created last legislative session to go on inactive or retired status.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute as the authorizing statute gives the board the ability to promulgate regulations to register with the board as a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing credential holders the ability to go on inactive or retired status and allow the board to track who is not practicing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: Credential holders desiring to go on inactive or retired status must notify the board. A credential holder must notify the board prior to returning to the practice of alcohol and drug counseling or peer support.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Credential holders pay a fifty (50) dollar fee to go on inactive status.

(c) As a result of compliance, what benefits will accrue to the entities: The credential holders have the liberty to place oneself on inactive status and return to work when desired with approval of the board.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a fee of fifty (50) dollars to go on inactive status.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1) and (5)

(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? The board is unable to determine how much, if any, revenue this administrative regulation will generate for state or local government for the first year. The amendments to this administrative regulation establish a fee of fifty (50) dollars to go on inactive status.

(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 board is unable to determine how much, if any, revenue this administrative regulation will generate for state or local government for subsequent years. The amendments to this administrative regulation establish a fee of fifty (50) dollars to go on inactive status.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

STATEMENT OF EMERGENCY
803 KAR 2:180E

This emergency administrative regulation is promulgated to meet an imminent threat to public health, safety, or welfare, to prevent a loss of federal funds, and ensure compliance with federal mandates. Kentucky operates a State Plan approved by the Occupational Safety and Health Administration (OSHA) that provides employee occupational safety and health (OSH) protections. OSHA approves, monitors, and provides funding to Kentucky. 803 KAR 2:180, Recordkeeping, reporting, statistics was

found deficient by the Administrative Regulations Review Subcommittee on June 9, 2020. Senate Bill 65 of the 2021 Regular Session creates a new section of KRS Chapter 13A to nullify administrative regulations that became effective after being found deficient during the 2020 legislative interim. This emergency administrative regulation amends 803 KAR 2:180, Recordkeeping, reporting, and statistics to address the finding of deficiency. It is necessary to promulgate this emergency regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i), which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures Kentucky's compliance with the federal mandates, maintains Kentucky's primacy, and retains federal funding. This emergency administrative regulation will be replaced by an ordinary administrative regulation, which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
LARRY ROBERTS, Secretary
KIMBERLEE C. PERRY, Commissioner

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Emergency Amendment)

803 KAR 2:180E. Recordkeeping, reporting, and statistics.

EFFECTIVE: March 10, 2021

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 for the collection, compilation, and analysis of [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 emergency 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) "C.F.R." means Code of Federal Regulations.

(3) [(2)] "Employee" is defined by KRS 338.015(2).

(4) [(3)] "Employer" is defined by KRS 338.015(1).

(5) [(4)] "Hospitalization" means formal admission to a hospital or clinic for care or treatment [~~treatment, observation, or diagnostic testing~~].

(6) [(5)] "Loss of eye" means the physical removal of an eye from the socket.

(7) [(6)] "Occupational Safety and Health Act" or "OSHA" means KRS Chapter 338.

(8) [(7)] "Secretary of Labor" means the Secretary of the United States Department of Labor or the Secretary of the Labor Cabinet.

(9) [(8)] "Section 11(c) of the Act" means KRS 338.121(3).

Section 2. Except as modified by the definitions in Section 1 and the requirements in Sections 3 and 4 of this emergency administrative regulation, an [An] employer shall comply with 29 C.F.R. Part 1904, Recording and Reporting Occupational Injuries and Illnesses, [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~~

of this administrative regulation:

(1) 29 C.F.R. Part 1904, effective July 1, 2019; and

(2) The amendment to 29 C.F.R. Part 1904 as published in the May 14, 2019 Federal Register, Volume 83, Number 93].

Section 3. Reporting Fatalities, Amputations, Hospitalizations, or Loss of Eye. (1) The reporting requirements established in this section shall apply in lieu of 29 C.F.R. 1904.39.

(2) [(4)] 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, the work-related death of an employee, including death resulting from a heart attack [any of the following which occurs in the work environment, or is caused or contributed to by an event in the work environment:

(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].

(3) [(2)] The report required pursuant to subsection (2) [(4)] of this section shall be made within eight (8) hours from when the death [~~or hospitalization of three (3) or more employees]~~ 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)].~~

(4) [(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 that [which] occurs as a result of a work-related incident [in the work environment, or is caused or contributed to by an event in the work environment]:

(a) An amputation suffered by an employee;

(b) An employee's loss of an eye; or

(c) The hospitalization of an employee [fewer than three (3) employees within seventy-two (72) hours following the incident], including [any] hospitalization resulting from a heart attack.

(5) [(4)] The report required pursuant to subsection (4) [(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]~~ is reported to the employer, the employer's agent, or another employee.

Section 4. If the employer cannot speak with someone in the Frankfort office, the employer shall make the report required pursuant to Section 3 of this emergency administrative regulation to the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742)]

(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].

KIMBERLEE PERRY, Commissioner

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 9, 2021

FILED WITH LRC: March 10, 2021 at 1:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on April 22, 2021 at 10:00 a.m. (ET). The hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/85836524599?pwd=TFcydlFoQzk0THlWM0s0SWJBNU5jdz09>, password 460764 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through April 30, 2021. 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: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this emergency administrative regulation defines terms not used in the federal standard. The amended definition for hospitalization eliminates the requirement to report hospitalizations for observation or diagnostic testing. The amended definition matches the federal definition. Section 2 requires employers to comply with the requirements of 29 C.F.R. Part 1904 except as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this emergency administrative regulation. Section 3 establishes the reporting criteria for an employee death, amputation, in-patient hospitalization, or loss of eye. To provide clarity and promote understanding, the language in Section 3 clarifies the reporting criteria apply when the event is work related. Section 3 removes the requirement that dates back to the 1980s to report the hospitalization of three (3) or more employees within eight (8) hours. This emergency administrative regulation retains other provisions of the regulation that have been effective since August 7, 2006.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i) which all require the Kentucky OSH Program to be as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.161(1) requires the Department of Workplace Standards to promulgate administrative regulations for the collection, compilation, and analysis of occupational safety and health statistics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i) which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures the state is as effective as the federal requirement.

(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: Section 1 of this emergency administrative regulation defines terms not used in the federal standard. The amended definition for hospitalization eliminates the requirement to report hospitalizations for observation or diagnostic testing. The amended definition matches the federal definition. Section 2 requires employers to comply with the requirements of 29 C.F.R. Part 1904 except as modified by the definitions in Section 1 and requirements

of Sections 3 and 4 of this emergency administrative regulation. Section 3 establishes the reporting criteria for an employee death, amputation, in-patient hospitalization, or loss of eye. To provide clarity and promote understanding, the language in Section 3 clarifies the reporting criteria apply when the event is work related. Section 3 removes the requirement that dates back to the 1980s to report the hospitalization of three (3) or more employees within eight (8) hours. This emergency administrative regulation retains other provisions of the regulation that have been effective since August 7, 2006.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 338.161, which requires the Department of Workplace Standards to develop and maintain a program of collection, compilations, and analysis of occupational safety and health statistics.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all clarity and a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation affects employers in the Commonwealth engaged in all activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this emergency administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

This amendment promotes employee safety and health throughout Kentucky and ensures the state program as effective as the federal program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this emergency administrative regulation.

(b) On a continuing basis: There are no new costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There are no fees associated with this emergency administrative regulation. There is no need to increase funding for this emergency administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2), 29 U.S.C. 667

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This emergency administrative regulation differs from the federal requirement and allows employers greater reporting flexibility.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This emergency administrative regulation allows employers greater reporting flexibility.

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 emergency administrative regulation affects any unit, part, or division of local government covered by KRS 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), 29 C.F.R. 1956.10(i)

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. None.

(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? There are no costs associated with this amendment.

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional expenditures to employers.

STATEMENT OF EMERGENCY
810 KAR 2:001E

This emergency regulatory amendment is promulgated to meet an imminent threat to public health, safety, or welfare, and to prevent a loss of state funds. On February 11, 2021, the Kentucky General Assembly passed SB 120, which enacted numerous changes to pari-mutuel wagering in Kentucky, particularly as it relates to historical horse racing. This administrative regulation is filed on an emergency basis to ensure compliance with that statute, which will allow the Kentucky Horse Racing Commission ("KHRC") to continue to regulate pari-mutuel wagering. Additionally, this regulation is filed on an emergency basis to ensure continued regulatory authority over pari-mutuel wagering in Kentucky. The KHRC began migrating its regulations from Title 811 on September 9, 2020. Due to the Supreme Court's opinion in Family Trust Foundation v. Kentucky Horse Racing Commission, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120, those regulations became obsolete. Therefore, the migration must take place in emergency regulations. Otherwise, the pending regulations will expire, and pari-mutuel wagering will not be regulated. This would cause a loss of state funds, and would also negatively impact the public welfare by endangering jobs. This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Emergency Amendment)

810 KAR 2:001E. Definitions for 810 KAR Chapter 2.

EFFECTIVE: February 25, 2021

RELATES TO: KRS Chapter 230

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 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 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 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 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 is not a mutuel entry.

(21) "Foul" means an action by a jockey or driver that tends to hinder another jockey, driver, 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" is defined in 810 KAR 6:001. [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) 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 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 at 10 a.m. of the first racing day; and

(b) Extends 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" is defined in 810 KAR 6:001. [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, a licensed premises, 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,

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which, if true, would exclude that horse or driver from racing.

(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 pari-mutuel 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 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[(49)].

(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[(24)].

(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.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: February 24, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on April 22, 2021 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax

(859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 2.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 2 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 2.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 2.

(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 alter the definitions of "licensed premises" and "pari-mutuel wagering, mutuel wagering, or pari-mutuel system of wagering," so that they cross-reference the definitions for those terms found in 810 KAR 6:001. In addition, this amendment includes a variety of other minor language modifications that are intended to ensure clarity and consistency throughout the Commission's authorizing statutes and accompanying regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure consistency and a lack of conflict between the Commission's regulations and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the eight currently-licensed racing associations in the Commonwealth and any applicant for a racing association license.

(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: No additional action is required at this time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation, as amended, is not anticipated to generate any new or

additional costs.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted 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? The Kentucky Horse Racing Commission 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 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

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

STATEMENT OF EMERGENCY
810 KAR 3:001E

This emergency regulatory amendment is promulgated to meet an imminent threat to public health, safety, or welfare, and to prevent a loss of state funds. On February 11, 2021, the Kentucky

General Assembly passed SB 120, which enacted numerous changes to pari-mutuel wagering in Kentucky, particularly as it relates to historical horse racing. This administrative regulation is filed on an emergency basis to ensure compliance with that statute, which will allow the Kentucky Horse Racing Commission ("KHRC") to continue to regulate pari-mutuel wagering. Additionally, this regulation is filed on an emergency basis to ensure continued regulatory authority over pari-mutuel wagering in Kentucky. The KHRC began migrating its regulations from Title 811 on September 9, 2020. Due to the Supreme Court's opinion in Family Trust Foundation v. Kentucky Horse Racing Commission, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120, those regulations became obsolete. Therefore, the migration must take place in emergency regulations. Otherwise, the pending regulations will expire, and pari-mutuel wagering will not be regulated. This would cause a loss of state funds, and would also negatively impact the public welfare by endangering jobs. This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Emergency Amendment)

810 KAR 3:001E. Definitions for 810 KAR Chapter 3.

EFFECTIVE: February 25, 2021

RELATES TO: KRS Chapter 230

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing is conducted in Kentucky. KRS 230.260(8) 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. This administrative regulation defines the terms used in 810 KAR Chapter 3.

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) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.

(3) "ARCI" means the Association of Racing Commissioners International.

(4) "Association" is defined by KRS 230.210(5).

(5) "Authorized agent" means in flat racing any 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.

(6) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 810 KAR 4:050 and 810 KAR 5:030

(7) "Commission" means:

(a) The Kentucky Horse Racing Commission as defined by KRS 230.210(16) 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) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(10) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

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(11) "Directive" means an official order issued by the commission or the executive director.

(12) "Draw" means the process of determining post positions by lot.

(13) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(14) "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.

(15) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(16) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(17) "Equipment" means in flat racing 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.

(18) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(19) "Ineligible" means a horse or person not qualified under KAR Title 810 or conditions of a race to participate in a specified racing activity.

(20) "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.

(21) "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.

(22) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(23) "Licensee" means an individual, firm, association, partnership, corporation, limited liability company, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(24) "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. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(25) "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.

(26) "Nominal change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of less than five (5) percent of the equity securities or other ownership interest of a partnership, association, corporation, limited liability company, or other legal entity holding a license issued by the commission.

(27) "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.

(28) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" ~~is defined in 810 KAR 6:001. [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.]~~

(29) "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.

(30) "Purse" means the gross cash portion of the prize for which a race is run.

(31) "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.

(32) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(33) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(34) "Ruled off" means denial of entrance to premises of any association under jurisdiction of the commission.

(35) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(36) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race.

(37) "Simulcasting" is defined by KRS 230.210[(49)].

(38) "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.

(39) "Substantial change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of five (5) percent or more of the equity securities or other ownership interest of a partnership, association, corporation, limited liability company, or other legal entity holding a license issued by the commission.

(40) "Suspended" means withdrawal of racing privileges by the stewards or commission.

(41) "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.

(42) "USTA" means the United States Trotting Association.

(43) "Workout" means in flat racing 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.

(44) "Year" means twelve (12) consecutive months beginning with January and ending with December.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: February 24, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at April 22, 2021 at 9:00 a.m. at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511 via Zoom. 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 11:59 p.m. on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email Jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 3.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 3 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 3.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 3.

(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 alter the definition of "pari-mutuel wagering, mutuel wagering, or pari-mutuel system of wagering," so that it cross-references the definition for that term found in 810 KAR 6:001. In addition, this amendment includes a variety of other minor language modifications that are intended to ensure clarity and consistency throughout the Commission's authorizing statutes and accompanying regulations

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure consistency and a lack of conflict between the Commission's regulations and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the eight currently-licensed racing associations in the Commonwealth and any applicant for a racing association license.

(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: No additional action is required at this time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation, as amended, is not anticipated to generate any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any

new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted 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? The Kentucky Horse Racing Commission 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 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

STATEMENT OF EMERGENCY 810 KAR 4:001E

This emergency regulatory amendment is promulgated to meet an imminent threat to public health, safety, or welfare, and to prevent a loss of state funds. On February 11, 2021, the Kentucky General Assembly passed SB 120, which enacted numerous changes to pari-mutuel wagering in Kentucky, particularly as it relates to historical horse racing. This administrative regulation is filed on an emergency basis to ensure compliance with that statute, which will allow the Kentucky Horse Racing Commission ("KHRC") to continue to regulate pari-mutuel wagering. Additionally, this regulation is filed on an emergency basis to ensure continued regulatory authority over pari-mutuel wagering in Kentucky. The KHRC began migrating its regulations from Title 811 on September 9, 2020. Due to the Supreme Court's opinion in Family Trust Foundation v. Kentucky Horse Racing Commission, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120,

those regulations became obsolete. Therefore, the migration must take place in emergency regulations. Otherwise, the pending regulations will expire, and pari-mutuel wagering will not be regulated. This would cause a loss of state funds, and would also negatively impact the public welfare by endangering jobs. This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Emergency Amendment)**

810 KAR 4:001E. Definitions for 810 KAR Chapter 4.

EFFECTIVE: February 25, 2021

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) 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. This administrative regulation defines the terms used in 810 KAR Chapter 4.

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 that 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) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.

(4) "Also eligible" means in flat racing 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.

(5) "Appeal" means a request for the commission to investigate, consider, and review any decision or ruling of a steward or judge or official of a meeting.

(6) "Arrears" means all 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.

(7) "Association" is defined by KRS 230.210(5).

(8) "Authorized agent" means in flat racing any 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.

(9) "Calendar days" means consecutive days counted irrespective of number of racing days.

(10) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 810[814] KAR 4:050.

(11) "Closing" means the time published by the association after which entries for a race are not accepted by the racing secretary.

(12) "Coggins test" means a blood test used to determine if a horse is positive for Equine Infectious Anemia.

(13) "Commission" means:

(a) The Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; and

(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.

(14) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(15) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(16) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(17) "Declaration" means 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 810 KAR 4:030.

(18) "Directive" means an official order issued by the commission or the executive director.

(19) "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;

(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, judges, or the commission revising the order of finish of a race.

(21) "Draw" means the process of determining post positions by lot.

(22) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(23) "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.

(24) "Field" or "mutuel field" means a single betting interest, which is not a mutuel entry, involving more than one (1) horse.

(25) "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.

(26) "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.

(27) "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.

(28) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(29) "Ineligible" means a horse or person not qualified under Title 810 KAR or conditions of a race to participate in a specified racing activity.

(30) "Inquiry" means an investigation by the stewards or judges of a contest prior to declaring the result of the contest official.

(31) "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.

(32) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(33) "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.

(34) "Maiden" means in flat racing, a horse that has never won a race at a recognized meeting in any country.

(35) "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. A meeting begins at 10 a.m. of the first racing day and extend through a period

ending one (1) hour after the last scheduled race of the last day.

(36) "Month" means calendar month.

(37) "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.

(38) "Nominator" means the person in whose name a horse is entered for a stakes race.

(39) "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.

(40) "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards or judges.

(41) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(42) "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.

(43) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" is defined in 810 KAR 6:001. ~~[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.]~~

(44) "Post" means the starting point of a race.

(45) "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.

(46) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(47) "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.

(48) "Purse" means the gross cash portion of the prize for which a race is run.

(49) "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.

(50) "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.

(51) "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.

(52) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(53) "Recognized meeting" means any meeting with regularly scheduled live horse races, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, and conducted with the applicable breed registry.

(54) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(55) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(56) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(57) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race.

(58) "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.

(59) "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(60) "Stakes" mean all fees paid by subscribers to an added-

money or stakes race for nominating, eligibility, entrance, or starting, as required by the conditions of the race, with the fees to be included in the purse.

(61) "Stakes race" means a race that closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse

(62) "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.

(63) "Steward" means a duly appointed racing official with powers and duties established in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(64) "Subscription" means nomination or entry of a horse in a stakes race.

(65) "'Suspended" means withdrawal of racing privileges by the stewards or commission.

(66) "Thoroughbred racing" is defined by KRS 230.210(24).

(67) "Tote" or "tote board" means the totalizator.

(68) "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(69) "Walkover" means a race in which the only starter or all starters represent single ownership.

(70) "Weigh in" means in flat racing the presentation of a jockey to the clerk of scales for weighing after a race.

(71) "Weigh out" means in flat racing the presentation of a jockey to the clerk of scales for weighing prior to a race.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: February 24, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at April 22, 2021 at 9:00 a.m. at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511 via Zoom. 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 11:59 p.m. on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 4.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 4 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 4.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 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 alter the definition of "pari-mutuel wagering, mutuel wagering, or pari-mutuel system of wagering," so that it cross-references the definition for that term found in 810 KAR 6:001. In addition, this amendment includes a variety of other minor language modifications that are intended to ensure clarity and consistency throughout the Commission's authorizing statutes and accompanying regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure consistency and a lack of conflict between the Commission's regulations and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the five currently-licensed thoroughbred racing associations in the Commonwealth and any applicant for a thoroughbred, flat, and/or steeplechase racing association license.

(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: No additional action is required at this time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation, as amended, is not anticipated to generate any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted 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? The Kentucky Horse Racing Commission 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 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

STATEMENT OF EMERGENCY 810 KAR 5:001E

This emergency regulatory amendment is promulgated to meet an imminent threat to public health, safety, or welfare, and to prevent a loss of state funds. On February 11, 2021, the Kentucky General Assembly passed SB 120, which enacted numerous changes to pari-mutuel wagering in Kentucky, particularly as it relates to historical horse racing. This administrative regulation is filed on an emergency basis to ensure compliance with that statute, which will allow the Kentucky Horse Racing Commission ("KHRC) to continue to regulate pari-mutuel wagering. Additionally, this regulation is filed on an emergency basis to ensure continued regulatory authority over pari-mutuel wagering in Kentucky. The KHRC began migrating its regulations from Title 811 on September 9, 2020. Due to the Supreme Court's opinion in *Family Trust Foundation v. Kentucky Horse Racing Commission*, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120, those regulations became obsolete. Therefore, the migration must take place in emergency regulations. Otherwise, the pending regulations will expire, and pari-mutuel wagering will not be regulated. This would cause a loss of state funds, and would also negatively impact the public welfare by endangering jobs. This emergency regulation will be replaced by an ordinary

administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Emergency Amendment)**

810 KAR 5:001E. Definitions for 810 KAR Chapter 5.

EFFECTIVE: February 25, 2021

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 conditions under which standardbred [thoroughbred] racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to promulgate necessary and reasonable administrative regulations establishing 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 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 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, driver 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" is defined in 810 KAR 6:001. ~~means: (a) The location and physical plant described in response to question 5 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~~

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conducted in the following year;

~~(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.]~~

(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 at 10 a.m. of the first racing day; and

(b) Extends 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.

(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" is defined in 810 KAR 6:001. [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, a licensed premises, 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 pari-mutuel pools.

(60) "Rulings" means all determinations, decisions, or orders of the judges, [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[~~(49)~~].

(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) 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.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on April 22, 2021, at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative

regulation. Written comments shall be accepted through 11:59 p.m. on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 5 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 5.

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

(a) How the amendment will change this existing administrative regulation: This amendment will alter the definitions of "licensed premises" and "pari-mutuel wagering, mutuel wagering or pari-mutuel system of wagering," so that they cross-reference the definitions for those terms found in 810 KAR 6:001. In addition, this amendment includes a variety of other minor language modifications that are intended to ensure clarity and consistency throughout the Commission's authorizing statutes and accompanying regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure consistency and a lack of conflict between the Commission's regulations and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear, thereby reducing the possibility of any confusion.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the three currently-licensed standardbred racing associations in the Commonwealth and any applicant for a standardbred racing association license.

(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: No additional action is required at this time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation, as amended, is not anticipated to generate any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted 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? The Kentucky Horse Racing Commission 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 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**STATEMENT OF EMERGENCY
810 KAR 6:001E**

This emergency regulatory amendment is promulgated to meet an imminent threat to public health, safety, or welfare, and to prevent a loss of state funds. On February 11, 2021, the Kentucky General Assembly passed SB 120, which enacted numerous changes to pari-mutuel wagering in Kentucky, particularly as it relates to historical horse racing. This administrative regulation is filed on an emergency basis to ensure compliance with that statute, which will allow the Kentucky Horse Racing Commission ("KHRC") to continue to regulate pari-mutuel wagering. Additionally, this regulation is filed on an emergency basis to ensure continued regulatory authority over pari-mutuel wagering in Kentucky. The KHRC began migrating its regulations from Title 811 on September 9, 2020. Due to the Supreme Court's opinion in Family Trust Foundation v. Kentucky Horse Racing Commission, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120, those regulations became obsolete. Therefore, the migration must take place in emergency regulations. Otherwise, the pending regulations will expire, and pari-mutuel wagering will not be regulated. This would cause a loss of state funds, and would also negatively impact the public welfare by endangering jobs. This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Emergency Amendment)**

810 KAR 6:001E. Definitions for 810 KAR Chapter 6.

EFFECTIVE: February 25, 2021
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 the Kentucky Horse Racing Commission to regulate conditions under which horse~~[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. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel ~~[mutuel]~~ wagering on horse races under the pari-mutuel system of wagering. This administrative regulation defines the terms used in 810 KAR Chapter ~~6~~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) "Appaloosa horse" means a horse duly registered with the Appaloosa Horse Club, Inc., Moscow, Idaho.
- (4) "Appaloosa racing" is defined by KRS 230.210(3).
- (5) "Arabian horse" means a horse duly registered with the Arabian Horse Club Registry of America.
- (6)~~[(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 ~~6~~1.
- (7)~~[(4)]~~ "Association" is defined by KRS 230.210(5).
- (8)~~[(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.

- (9)~~[(6)]~~ "Betting interest" means a single horse, or more than one (1) horse joined as a mutual entry or joined in a mutual field, on which a single pari-mutuel wager may be placed.
- (10)~~[(7)]~~ "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.
- (11)~~[(8)]~~ "Breakage" means the net pool minus payout.
- (12)~~[(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.
- (13)~~[(10)]~~ "Calendar days" means consecutive days counted irrespective of number of racing days.
- (14) ~~[(11)]~~—"Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 810 KAR 6:020.
- (15) ~~[(12)]~~ "Claiming race" means any race in which every horse running in the race may be transferred in conformity with 810 KAR 4:050.
- (16)~~[(13)]~~—"Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.
- (17)~~[(14)]~~ "Commission" means:
 - (a) The Kentucky Horse Racing Commission 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.
- (18)~~[(15)]~~ "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.
- (19)~~[(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.
- (20)~~[(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 ~~6~~1.
- (21)~~[(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]~~ races.
- (22)~~[(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 814]~~ 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.
- (23)~~[(20)]~~ "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.
- (24) "Driver" means a person who is licensed to drive a horse in a harness race.
- (25)~~[(21)]~~ "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.
- (26)~~[(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.
- (27)~~[(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.
- (28)~~[(24)]~~ "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race or races other than a win, place, or show wager placed on a live horse race.
- (29)~~[(25)]~~ "Field" or "mutuel field" means a single betting interest involving more than one (1) horse that is not a mutuel entry.
- (30)~~[(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.

~~(31)~~~~(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.

~~(32)~~~~(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.

~~(33)~~~~(29)~~ "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

~~(34)~~~~(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.

~~(35)~~~~(31)~~ "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding)[a thoroughbred registered with The Jockey Club irrespective of age or sex designation].

~~(36)~~~~(32)~~ "Ineligible" means a horse or person not qualified under 810 KAR Chapter ~~6~~~~4~~ or conditions of a race to participate in a specified racing activity.

~~(37)~~~~(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.

~~(38)~~~~(34)~~ "Jockey" means a rider currently licensed to ride in races other than harness 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.

~~(39)~~ "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.

~~(40)~~~~(35)~~ "Lessee" means a licensed owner whose interest in a horse is a leasehold.

~~(41)~~~~(36)~~ "Licensed premises" means:

(a) For facilities in operation as of 2010, ~~the~~~~[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) Real property of an association, if the association receives approval from the commission after 2010 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. ~~Not~~~~[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.

~~(42)~~~~(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.

~~(43)~~~~(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.

~~(44)~~~~(39)~~ "Match race" means a race between two (2) horses for which no other horses are eligible.

~~(45)~~~~(40)~~ "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 at 10 a.m. of the first racing day; and

(b) Extends through a period ending one (1) hour after the last scheduled race of the last day.

~~(46)~~~~(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 that pari-mutuel pool~~[the net pool].~~

~~(47)~~~~(42)~~ "Month" means calendar month.

~~(48)~~~~(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.

~~(49)~~~~(44)~~ "Net pool" means the total amount wagered less refundable wagers and takeout.

~~(50)~~~~(45)~~ "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

~~(51)~~~~(46)~~ "Nominator" means the person in whose name a horse is entered for a race.

~~(52)~~~~(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.

~~(53)~~~~(48)~~ "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering previously or hereafter approved by the commission in which one (1) or more patrons wager on a horse race or races, whether live, simulcast, or previously run. Wagers shall be placed in one or more wagering pools, and wagers on different races or sets of races may be pooled together. Patrons may establish odds or payouts, and winning patrons share in amounts wagered including any carryover amounts, plus any amounts provided by an association less any deductions required, as approved by the racing commission and permitted by law. Pools may be paid out incrementally over time as approved by the commission~~[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].

~~(54)~~ "Pari-mutuel pool" means any pool into which pari-mutuel wagers made by patrons are placed. For every wager placed into a pari-mutuel pool by a patron, that patron is eligible to receive at least a minimum payout on a winning wager.

~~(55)~~~~(49)~~ "Patron" means an individual present at a track, licensed premises, or a simulcast facility who observes or wagers on ~~[a]~~ live or historical horse ~~race~~~~[race].~~

~~(56)~~~~(50)~~ "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

~~(57)~~~~(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.

~~(58)~~~~(52)~~ "Post" means the starting point of a race.

~~(59)~~~~(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.

~~(60)~~~~(54)~~ "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

~~(61)~~~~(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.

~~(62)~~~~(56)~~ "Purse" means the gross cash portion of the prize for which a race is run.

~~(63)~~ "Quarter horse" means a horse registered with the American Quarter Horse Association of Amarillo, Texas.

~~(64)~~~~(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.

~~(65)~~~~(58)~~ "Race" means a running contest between horses, [thoroughbreds] ridden by jockeys or driven by drivers, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

~~(66)~~~~(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.

~~(67)~~~~(60)~~ "Racing official" means a racing commission

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member, commission staff as duties require, and all association racing department employees, as duties require.

~~(68)~~~~(64)~~ "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.

~~(69)~~~~(62)~~ "Registration certificate" means, with respect to thoroughbreds:

(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.

~~(70)~~~~(63)~~ "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

~~(71)~~~~(64)~~ "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

~~(72)~~~~(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.

~~(73)~~~~(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.

~~(74)~~~~(67)~~ "Secretary" means the duly appointed and currently serving secretary of the commission.

~~(75)~~~~(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.

~~(76)~~ "Simulcasting" is defined by KRS 230.210.

~~(77)~~~~(69)~~ "Specimen" means a sample of blood, urine, or other biological sample taken or drawn from a horse for chemical testing.

~~(78)~~~~(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) Included in the purse.

~~(79)~~~~(74)~~ "Stakes race" means a race that 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).

~~(80)~~~~(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.

~~(81)~~~~(73)~~ "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.

~~(82)~~~~(74)~~ "Subscription" means nomination or entry of a horse in a stakes race.

~~(83)~~~~(75)~~ "Takeout" is defined in Section 1(17)(b) of this regulation as "Commission."~~means the total amount of money, excluding breakage and any amounts allocated to a seed pool, withheld from each pari-mutuel pool, as authorized by KRS 230.3615 and 810 KAR Chapter 1.~~

~~(84)~~~~(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 or races.

~~(85)~~~~(77)~~ "Thoroughbred racing" is defined by KRS 230.210~~(24)~~.

~~(86)~~~~(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.

~~(87)~~~~(79)~~ "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

~~(88)~~ "Wagering pool" is defined in Section 1 of this regulation as pari-mutuel pool.

~~(89)~~~~(80)~~ "Walkover" means a race in which the only starter or all starters represent single ownership.

~~(90)~~~~(84)~~ "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

~~(91)~~~~(82)~~ "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

~~(92)~~~~(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.

~~(93)~~~~(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.

~~(94)~~~~(85)~~ "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. If 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.

JONATHAN RABINOWITZ, Chair
KERRY HARVEY, Secretary

APPROVED BY AGENCY: February 24, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on April 22, 2021 at Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the regulatory definitions that apply to all pari-mutuel and exotic wagering on live and historical horse races in the Commonwealth.

(b) The necessity of this administrative regulation: The regulation is necessary to provide specific and updated definitions of the terms used in the commission's regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation provides specific and updated definitions for the terms used in the commission's administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: First, this amendment changes terminology in the regulation to comply with Family Trust Foundation v. Kentucky Horse Racing Commission, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120. Additionally, this amendment expands KAR Title 810 to regulate exotic wagering on all types of live or historical horse racing, including thoroughbred, standardbred, quarter horse, appaloosa, and Arabian racing. This expansion will ensure that the KHRC's pari-mutuel and exotic wagering regulations do not expire, as set forth above in the statement of emergency. This amendment will also continue to bring uniformity to the rules governing exotic wagering for the various breeds.

(b) The necessity of the amendment to this administrative regulation: First, this amendment is necessary to comply with Family Trust Foundation v. Kentucky Horse Racing Commission, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120. This amendment is also necessary to reduce the number of regulations applicable to exotic wagering and make the regulations easier to understand. This emergency amendment will prevent these regulations from expiring, as set forth in the statement of emergency. Allowing the Commission's pari-mutuel and exotic wagering regulations to expire would not only violate KRS 230.361, but would also cause the loss of millions of dollars of taxable revenue at the racing associations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to regulate the conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This regulation provides specific definitions of terms used in the commission's administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This proposed amendment provides definitions of terms used in the commission's administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse racing in the Commonwealth, and the commission.

(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: The emergency amendment merely updates language to comply with Family Trust Foundation v. Kentucky Horse Racing Commission, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120, and migrates Title 811 regulations to Title 810. This emergency amendment will not require regulated entities to take any additional compliance actions that they are not already taking.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity or to increase compliance costs at all for the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The racing associations will have a defined process to

follow if they plan to offer exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each racing association. The increased purses will help the racing associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to a racing association's facilities. The patrons will benefit from any improvements to a racing association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the racing associations for additional employee compensation and other expenses.

(b) On a continuing basis: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the racing associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. As a general rule, the commission is reimbursed by the racing associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(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 proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each racing association.

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 Horse Racing Commission and the Department of Revenue.

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

KRS 230.215, 230.260, 230.361, and 230.370.

(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 proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this proposed amendment will preserve tax revenue by allowing associations to continue offering pari-mutuel wagering on historical horse racing, while still complying with recent Supreme Court case law and the newly enacted SB 120. As it is under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this proposed amendment will preserve tax revenue by allowing associations to continue offering pari-mutuel wagering on historical horse racing, while still complying with recent Supreme Court case law and the newly enacted SB 120. As it is under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This regulation will have no effect on the expenditures and revenues of any state or local government agency.

(d) How much will it cost to administer this program for subsequent years? There will be no administrative costs as a result of this regulation.

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: N/A.

**STATEMENT OF EMERGENCY
810 KAR 6:010E**

This emergency regulation is promulgated to meet an imminent threat to public health, safety, or welfare, and to prevent a loss of state funds. On February 11, 2021, the Kentucky General Assembly passed SB 120, which enacted numerous changes to pari-mutuel wagering in Kentucky, particularly as it relates to historical horse racing. This administrative regulation is filed on an emergency basis to ensure compliance with that statute, which will allow the Kentucky Horse Racing Commission (“KHRC”) to continue to regulate pari-mutuel wagering. Additionally, this regulation is filed on an emergency basis to ensure continued regulatory authority over pari-mutuel wagering in Kentucky. The KHRC began migrating its regulations from Title 811 on September 9, 2020. Due to the Supreme Court’s opinion in Family Trust Foundation v. Kentucky Horse Racing Commission, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120, those regulations became obsolete. Therefore, the migration must take place in emergency regulations. Otherwise, the pending regulations will expire, and pari-mutuel wagering will not be regulated. This would cause a loss of state funds, and would also negatively impact the public welfare by endangering jobs. This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Emergency Administrative Regulation)**

810 KAR 6:010E. Exotic wagering.

EFFECTIVE: February 25, 2021

RELATES TO: KRS 230.300, 230.361, 230.3615, 230.370, 230.398, 230.750

STATUTORY AUTHORITY: KRS 230.210, 230.215, 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the “commission”) to regulate conditions under which horse 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 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 KAR Title 810.

Section 1. All Pari-mutuel Wagers on a Historical Horse Race or Races 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 or races 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 of approval for 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 KAR Title 810.

(6) The commission shall notify the association if it determines that the criteria 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 or Races.

(1) Except as 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 or races, which shall include a detailed description of the rules that apply to the pari-mutuel wager and the method of calculating payouts.

(2) If the rules have not been modified since the pari-mutuel 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 a Historical Horse Race or Races.

(1) An association shall submit a written request to the

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commission for permission to offer any exotic wager on a historical horse race or races, 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;

(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 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 referenced in Section 6(2) of this administrative regulation between the association and one of the following horsemen's organizations, as applicable:

1. For thoroughbred associations operating historical horse racing, the Kentucky Horsemen's Benevolent and Protective Association, the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, or their successors;

2. For standardbred associations operating historical horse racing, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, or their successors;

3. For quarterhorse associations operating historical horse racing, the Kentucky Quarter Horse Racing Association or its successor;

4. For Arabian associations operating historical horse racing, the Arabian Jockey Club, or its successor; and

5. For appaloosa associations operating historical horse racing, a horsemen's organization representing appaloosa racing.

(2)(a) Except as set forth in paragraph (b) of this subsection, each association that is approved by the commission to offer exotic wagering on historical horse racing shall request, in any application submitted for a license, to conduct live horse racing pursuant to KRS 230.300 and 810 KAR 3:010:

1. No less than 100 percent of the number of racing days initially requested by the association in its application to conduct 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 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 racing for 2010, or the number of races initially applied for by the association in its application to conduct racing for 2010, if written approval is obtained from the commission, and from one of the following horsemen's organizations, as applicable:

1. for thoroughbred associations operating historical horse racing, the Kentucky Horsemen's Benevolent and Protective Association, the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, or their successors;

2. for standardbred associations operating historical horse racing, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, or their successors;

3. for quarterhorse associations operating historical horse racing, the Kentucky Quarter Horse Racing Association or its successor;

4. for Arabian associations operating historical horse racing, the Arabian Jockey Club, or its successor; and

5. for appaloosa associations operating historical horse racing,

a horsemen's organization representing appaloosa racing.

Section 5. Terminals Used for Wagering on a Historical Horse Race or Races.

(1) Wagering on historical horse races shall be conducted only on terminals approved by the commission as 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 historical horse races 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 set forth in KRS 230.3615 or KRS 230.750, as applicable.

(2) Each association shall enter into an agreement with one of the following horsemen's organizations, as applicable, to establish the allocation of the takeout on all exotic wagers on historical horse races offered by the association:

1. For thoroughbred associations operating historical horse racing, the Kentucky Horsemen's Benevolent and Protective Association, the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, or their successors;

2. For standardbred associations operating historical horse racing, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, or their successors;

3. For quarterhorse associations operating historical horse racing, the Kentucky Quarter Horse Racing Association or its successor;

4. For Arabian associations operating historical horse racing, the Arabian Jockey Club, or its successor; and

5. For appaloosa associations operating historical horse racing, a horsemen's organization representing appaloosa racing. 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. 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.

JONATHAN RABINOWITZ, Chair

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: February 24, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on April 22, 2021 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511 via Zoom. 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 11:59 p.m. on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies the process for licensed racing associations to request permission from the Kentucky Horse Racing Commission to offer exotic forms of pari-mutuel wagers on live and historical horse races. It includes a process for associations to request permission to offer pari-mutuel wagering on live and historical horse races and establishes criteria for the commission to evaluate such requests.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which 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 wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the procedures and regulations governing exotic forms of pari-mutuel wagering under KRS Chapter 230 and the commission's administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This administrative regulation establishes the criteria for determining whether exotic wagers requested by licensed racing association comply with the provisions of KRS Chapter 230 and the commission's administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment. It is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment. It is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency regulation will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place exotic wagers on live and historical horse racing in the Commonwealth, and the commission.

(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: The emergency regulation merely updates language to comply with *Family Trust Foundation v. Kentucky Horse Racing Commission*, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120. This emergency regulation also migrates Title 811 regulations to Title 810. This emergency regulation will not require regulated entities to take any additional compliance actions that they are not already taking.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This emergency regulation is not anticipated to significantly increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the

entities: The associations will have a defined process to follow if they plan to offer exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This emergency regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses.

(b) On a continuing basis: This emergency regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This emergency regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(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 regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This emergency regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission. However, as in previous version of this regulation, the associations that request and receive permission to offer exotic wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Jennifer Wolsing

(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 Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.210, KRS 230.215, 230.361, 230.370.

(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 emergency regulation is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this emergency regulation will preserve tax revenue by allowing associations to continue offering exotic pari-mutuel wagers. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 regulation is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this emergency regulation will preserve tax revenue by allowing associations to continue to offer exotic pari-mutuel wagers. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This emergency regulation is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

(d) How much will it cost to administer this program for subsequent years? This emergency regulation is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

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: N/A

**STATEMENT OF EMERGENCY
810 KAR 6:030E**

This emergency regulation is promulgated to meet an imminent threat to public health, safety, or welfare, and to prevent a loss of state funds. On February 11, 2021, the Kentucky General Assembly passed SB 120, which enacted numerous changes to pari-mutuel wagering in Kentucky, particularly as it relates to historical horse racing. This administrative regulation is filed on an emergency basis to ensure compliance with that statute, which will allow the Kentucky Horse Racing Commission (“KHRC”) to continue to regulate pari-mutuel wagering. Additionally, this regulation is filed on an emergency basis to ensure continued regulatory authority over pari-mutuel wagering in Kentucky. The KHRC began migrating its regulations from Title 811 on September 9, 2020. Due to the Supreme Court’s opinion in *Family Trust Foundation v. Kentucky Horse Racing Commission*, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120, those regulations became obsolete. Therefore, the migration must take place in emergency regulations. Otherwise, the pending regulations will expire, and pari-mutuel wagering will not be regulated. This would cause a loss of state funds, and would also negatively impact the public welfare by endangering jobs. This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Emergency Administrative Regulation)**

810 KAR 6:030E. Pari-mutuel wagering.

EFFECTIVE: February 25, 2021
RELATES TO: KRS 230.300, 230.361, 230.3615, 230.370, 230.398, 230.750

STATUTORY AUTHORITY: KRS 230.210, 230.215, 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to regulate conditions under which horse 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 wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the requirements for the operation of pari-mutuel wagering under KRS Chapter 230 and KAR Title 810, Chapter 6.

Section 1. Pari-Mutuel System of Wagering Required.

(1) The only wagering permitted on live or historical horse races shall be under the pari-mutuel system of wagering. All systems of wagering other than pari-mutuel shall be prohibited. Any person participating or attempting to participate in prohibited wagering shall be ejected and excluded from association grounds.

(2) Wagering conducted in conformity with KRS Chapter 230 and KAR Title 810 is pari-mutuel.

Section 2. Totalizator or Other Approved Equipment Required.

(1) Pari-Mutuel wagering on live and historical horse races shall only be conducted through the use of a totalizator or other similar mechanical equipment approved by the commission pursuant to KRS 230.361.

(2) The totalizator or other mechanical equipment shall be available for testing under the supervision of the commission upon request by the commission to ensure its proper working order.

Section 3. Wagering on Historical Horse Races Authorized.

(1) Wagering on historical horse races is hereby authorized and may be conducted in accordance with KRS Chapter 230 and KAR Title 810.

(2) Wagering on historical horse races shall only be conducted by:

(a) An association licensed to conduct a live horse race meet; or

(b) Two (2) or more associations licensed to conduct a live horse race meet:

- 1. Who form a joint venture; or
- 2. Pursuant to an agreement between them.

(3) Wagering on historical horse races shall only be permitted in a designated area on the licensed premises of an association licensed to conduct a live horse race meeting. Wagering on historical horse races shall not be offered in any other location.

(4) An association may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets conducted by the association. An association may conduct wagering on historical horse races on any days and hours approved by the commission, and shall not be limited to times during which the association is conducting a live horse race meeting.

(5) Any wager placed on a historical horse race or races is an exotic wager.

(6) Before offering wagering on historical horse races, an association shall first obtain the commission’s written approval of all wagers offered as set forth in KAR Title 810.

(7) All wagering on historical horse races shall incorporate the following elements:

(a) A patron may only wager on historical horse races on a terminal approved by the commission;

(b) An association shall at all times maintain at least two (2)

terminals offering each type of exotic wager on historical horse races;

(c) Once a patron deposits the wagered amount in the terminal offering wagering on a historical horse race, a historical horse race shall be chosen at random;

(d) Prior to the patron making his or her wager selections, the terminal shall not display any information that would allow the patron to identify the historical horse race or races on which he or she is wagering, including the location of the race or races, the date on which the race or races was run, the names of the horses in the race or races, or the names of the jockeys that rode the horses in the race or races;

(e) The terminal shall make available true and accurate past performance information on the historical horse race to the patron prior to making his or her wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form; and

(f) After a patron finalizes his or her wager selections, the terminal shall display a video replay of the race or races, or a portion thereof, and the official results of the race. The identity of each race shall be revealed to the patron after the patron has placed his or her wager.

Section 4. Payouts Only Out of Pari-Mutuel Pools: Pari-mutuel Seed Pools Required.

(1)(a) A wager on a historical horse race or races, less deductions permitted by KRS Chapter 230 or KAR Title 810, shall be placed in pari-mutuel pools approved by the commission.

(b) A payout to a winning patron shall be paid from money wagered by patrons and shall not constitute a wager against the association.

(c) An association conducting wagering on historical horse races shall not conduct wagering in such a manner that patrons are wagering against the association, or in such a manner that the amount retained by the association as a commission is dependent upon the outcome of any particular race or the success of any particular wager.

(2) An association offering wagering on historical horse races shall operate seed pools in a manner and method approved by the commission. For each wager made, an association may assign a percentage of the wager to seed pools. The seed pools shall be maintained and funded so that the amount available at any given time is sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

(3) An association shall provide the funding for the initial seed pool for each type of exotic wager. The funding for the initial seed pool shall be nonrefundable and in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

Section 5. Location of Terminals Used for Wagering on Historical Horse Races.

(1) Terminals offering wagering on historical horse races shall be located within designated areas which have the prior written approval of the commission. Designated areas shall be established in such a way as to control access by the general public and prevent entry by any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers.

(2) Each association shall monitor persons entering and leaving the designated areas and shall prevent access to any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers on historical horse races.

(3) Each association shall provide terminals that are accessible to handicapped patrons.

Section 6. Records to be Maintained.

(1) Each association and each simulcast facility authorized under KRS 230.380 shall maintain complete records of all pari-mutuel wagering transactions on live and historical horse races, including the amounts wagered at each betting window, self-service totalizator, mobile pari-mutuel teller, and terminal.

(2) A copy of the wagering records shall be retained and

safeguarded for a period of not less than two (2) years and shall not be destroyed without the prior written permission of the commission.

Section 7. Equipment.

(1) The association and the totalizator provider shall install a primary and secondary device, which activate the stop betting function of the totalizator system. The chief state steward, presiding judge, or his or her designee, shall use the primary device to stop wagering at the start of a live horse race. If wagering is not stopped by the primary device at the start of the race, the totalizator operator shall stop wagering using the secondary device. The secondary device shall be installed in the totalizator room and shall only be used by the totalizator operator.

(2) If there is a complete breakdown of the totalizator or mechanical equipment during the wagering on a live horse race, the wagering on that race shall be declared closed. If the totalizator remains capable of computing payouts, the payouts for that race shall be computed based on the amounts wagered prior to the breakdown. If the totalizator is incapable of computing payouts, then refunds shall be issued for all amounts wagered on that race.

(3) If there is a complete breakdown of a terminal offering wagering on historical horse races, the association offering the wager shall make a full refund of the patron's balance on the terminal at the time of the breakdown.

Section 8. Entries in a Live Horse Race.

(1) The chief state steward or presiding judge shall timely advise an association's pari-mutuel manager, prior to the beginning of wagering on each live horse race, of the horses that will compete in the race.

(2) If two (2) or more horses entered for the same live horse race are determined by the commission to have common ties through ownership or training, they may be joined by the commission as a mutuel entry. The mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. If the number of horses competing in a live horse race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator, together with horses of higher numbers, shall be grouped in the mutuel field as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

(3) A refund at cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race that has been scratched or withdrawn before the horse has become a starter, unless the horse is part of a mutuel entry, and one (1) or more of the entry starts.

Section 9. Sale of Pari-Mutuel Tickets on Live Horse Races.

(1) The following types of pari-mutuel wagering shall be permitted on a live horse race at all licensed associations and simulcast facilities:

(a) Normal win, place, and show wagers on each race;

(b) Any exotic wager previously approved by the commission; and

(c) Any new exotic wager approved in writing by the commission pursuant to KAR Title 810.

(2) Pari-mutuel tickets on live horse races shall not be sold except by a licensed association or a simulcast facility authorized by KRS 230.380.

(3) Pari-mutuel tickets on a live horse race shall only be sold at regular ticket windows, self-service totalizator machines, by mobile pari-mutuel tellers with hand-held totalizator devices, or by any other method approved in writing by the commission prior to being offered to the public. At least one (1) regular ticket window shall be made accessible to handicapped patrons.

(4)(a) Pari-mutuel stored value cards or cash vouchers may be offered by an association. The dollar amount on the stored value card or cash voucher may be redeemed at any time at any regular ticket window, or used to fund additional wagers.

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(b) Cash vouchers shall be valid for one (1) year after the date of issuance. Failure to present any cash voucher for redemption within one (1) year of issuance shall constitute a waiver of the right to receive payment on the voucher.

(5) A pari-mutuel wager shall not be made on a race after the totalizator has been locked for that race.

(6) Any claim by a patron that he or she has been issued a pari-mutuel ticket other than that which was requested shall be made before the patron has left the ticket window or before the mobile teller has initiated a transaction with another patron. A claim for an incorrect ticket shall not be honored after the totalizator has been locked.

Section 10. Payment on Pari-Mutuel Tickets on Live Horse Races.

(1) At the end of each live horse race, the placing judges shall advise the manager of the pari-mutuel department by the use of the totalizator equipment or by telephone of the official placement of the horses, and payouts shall not be made until the receipt of the notice.

(2) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as declared "official" by the stewards or judges. A subsequent change in the order of finish or award of purse money that may result from a subsequent ruling by the stewards, judges, or commission shall not affect the pari-mutuel payout.

(3) Each association shall deduct from each pari-mutuel pool a commission, not exceeding the commission provided by KRS 230.3615 or KRS 230.750. The remainder of the pari-mutuel pool after the deduction of the commission shall be the net pool for distribution as payouts to ticket holders.

(4) Payment on valid pari-mutuel tickets shall be made only if presented and surrendered within one (1) year following the running of the live horse race on which the wager was made. Failure to present a ticket within one (1) year shall constitute a waiver of the right to receive payment on the ticket.

(5) The association shall be responsible for the correctness of all payout prices posted as "official." If an error is made in posting the payout figures, and ascertained before any tickets are cashed, the posting error shall be corrected, accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error.

(6) A mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall not be accepted for payment.

(7) An association shall establish a written procedure for granting patrons an opportunity to file a claim on a lost pari-mutuel ticket and provide a copy to the commission.

(8) Prior to posting payouts, the association's pari-mutuel manager shall require the verification of the winning runners and prices prior to posting official results.

(9)(a) If an error is made in calculating the payout on a winning wager, resulting in overpayment, the association shall be responsible for the amount between the correct payout and the amount paid.

(b) If the error in calculation results in a payout being too low, the amount between the correct payout and the amount paid shall be added to the net pool of the same position in the following race on the same day or, if it is the last race of the day, then it shall be added to the net pool of the same position in the same race on the following day. If an error occurs in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day.

(c) If an error occurs causing underpayment on the last race of the entire racing meeting, the amount of the underpayment shall be paid to the Kentucky Revenue Cabinet.

Section 11. Minimum Wagers and Payouts.

(1) The minimum wager to be accepted by any licensed association on a live horse race shall be ten (10) cents. The minimum payout on a one (1) dollar wager on a live horse race shall be one (1) dollars and ten (10) cents, unless a minus pool occurs. If a minus pool occurs, the minimum payout for a one (1) dollar wager shall be one (1) dollar and five (5) cents.

(2) The minimum wager to be accepted by any licensed association on a historical horse race shall be ten (10) cents. The minimum payout on any wager shall not be less than the amount wagered.

Section 12. Minors Prohibited from Wagering. A minor shall not be permitted by any licensed association or simulcast facility to purchase or cash a pari-mutuel ticket.

Section 13. Odds and payouts posted.

(1) Approximate odds for live horse races, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public at intervals of not more than ninety (90) seconds.

(2) If daily double wagering is conducted on a live horse race, before off-time of the second daily double race, the probable payout for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race shall be posted; except that if a dead heat for first in the first daily double race occurs, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payouts shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public by posting or public address announcement as soon as possible and prior to the running of the second daily double race.

(3) For wagering on historical horse races, approximate odds or payouts for each pari-mutuel wagering pool shall be posted on each terminal for viewing by patrons at intervals of no more than ninety (90) seconds.

Section 14. Betting Explanation.

(1) Each association shall publish in the daily race program, for each day of live horse racing, a general explanation of pari-mutuel wagering offered on live horse races and an explanation of each type of pari-mutuel pool offered. The explanation also shall be posted in conspicuous places about the association grounds to adequately inform the public and shall be submitted to the commission prior to publication for approval.

(2) Each association shall post, in conspicuous places in the designated area, a general explanation of pari-mutuel wagering offered on historical horse races and an explanation of each pari-mutuel pool offered. The explanation shall be submitted to the commission for approval prior to its posting.

Section 15. Prior Approval Required for Number of Live Horse Races. Each association desiring to conduct more than nine (9) live horse races on a single day shall first apply in writing to the commission and obtain specific approval of the number of live horse races to be offered on a single day.

Section 16. Pari-mutuel Pools Dependent upon Entries for Live Horse Races.

(1) If horses representing five (5) or fewer betting interests qualify to start in a live horse race, the association may prohibit show wagering on that race. If horses representing four (4) or fewer betting interests qualify to start in a live horse race, the association may prohibit both place and show wagering on that race.

(2) If a horse is scratched by the stewards or judges after wagering has commenced, or if a horse is prevented from running in a live horse race because of failure of a starting-gate door to open properly, and the number of actual starters representing different betting interests is:

(a) Reduced to five (5), the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets; or

(b) Reduced to four (4) or fewer, the association may cancel both place and show wagering on that race and the entire place and show pool shall be refunded upon presentation and surrender of place and show tickets.

Section 17. Emergency Situation. If any emergency arises in

connection with the operation of the pari-mutuel department not provided for by this administrative regulation, the pari-mutuel manager shall take immediate corrective action and shall by the quickest means possible notify the chief state steward or presiding judge and render a full report to the commission.

Section 18. Severability. 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.

JONATHAN RABINOWITZ, Chair
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: February 24, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on April 22, 2021 at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511 via Zoom. 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 11:59 p.m. on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the Commonwealth. It authorizes pari-mutuel wagering on historical horse races and requires the use of pari-mutuel pools for such wagers. It establishes where, and under what circumstances, pari-mutuel wagering on live and historical horse races may take place. It places requirements on how winning pari-mutuel wagers shall be paid. It requires associations to maintain records regarding all pari-mutuel wagering at their facilities and to make them available to the commission on request. It establishes guidelines for the equipment used by the association to offer pari-mutuel wagering and provides requirements for the sale of pari-mutuel tickets. It establishes minimum wager amounts and payouts for pari-mutuel wagers on live and historical horse races.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which 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 wagering on horse races. This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be

conducted in the Commonwealth. This regulation provides the specific rules for pari-mutuel wagering on live and historical horse races in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This regulation is not an amendment. It is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This regulation is not an amendment. It is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation is not an amendment. It is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation is not an amendment. It is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse races in the Commonwealth, and the commission.

(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: The emergency regulation merely updates language to comply with *Family Trust Foundation v. Kentucky Horse Racing Commission*, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120, and migrates Title 811 regulations to Title 810. This emergency regulation will not require regulated entities to take any additional compliance actions that they are not already taking.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This emergency regulation is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The associations will be able to offer pari-mutuel wagering options to patrons. Pari-mutuel wagering will increase on-track attendance and total pari-mutuel handle. The increase revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This emergency regulation is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(b) On a continuing basis: This emergency regulation is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by

the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This emergency regulation is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(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 regulation is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This emergency regulation is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. However, as in previous version of this regulation, the associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

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 Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.210, KRS 230.215, 230.361, and 230.370.

(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 emergency regulation is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this emergency regulation will preserve tax revenue by allowing associations to continue offering pari-mutuel wagering. As is the case under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 regulation is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this emergency regulation will preserve tax revenue by allowing associations to continue offering pari-mutuel wagering. As is the case under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This emergency regulation is not anticipated to increase revenue any more than the current regulatory scheme does. As is the case under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

(d) How much will it cost to administer this program for subsequent years? This emergency regulation is not anticipated to increase revenue any more than the current regulatory scheme does. As is the case under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

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: N/A

STATEMENT OF EMERGENCY
811 KAR 1:251E

The Kentucky Horse Racing Commission filed emergency regulation 810 KAR 6:030E to comply with SB 120, which was passed by the legislature on February 11, 2021, as well as the Kentucky Supreme Court's recent decision in Family Tr. Found. of Kentucky, Inc. v. Kentucky Horse Racing Comm'n, No. 2018-SC-0630-TG, 2020 WL 5806813 (Ky. Sept. 24, 2020), which required regulatory changes to enable racing associations to continue to offer pari-mutuel wagering on historical horse races. This emergency regulatory amendment is necessary to meet an imminent threat to public health, safety, or welfare; to prevent a loss of state funds; and to prevent a conflict with the provisions of 810 KAR 6:030E. An ordinary regulation is not sufficient because a direct regulatory conflict would be created through the enactment of 810 KAR 6:030E, in the absence of this concurrent emergency regulation. This emergency regulation will not be replaced by an ordinary regulation because it operates to repeal 811 KAR 1:250, the substance of which will now be governed by 810 KAR 6:030E and the concurrently filed ordinary regulation: 810 KAR 6:030.

ANDY BESHEAR, Governor
KERRY HARVEY, Secretary

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Emergency Amendment)

811 KAR 1:251E. Repeal of 811 KAR 1:250.

EFFECTIVE: February 25, 2021
RELATES TO: KRS 230.300, 230.361, 230.3615, 230.370, 230.398, 230.750

STATUTORY AUTHORITY: KRS 230.210, 230.215, 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to regulate conditions under which horse 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 wagering on horse races under the pari-mutuel system of wagering. The administrative regulation establishing the requirements for the operation of pari-mutuel wagering under KRS Chapter 230 and KAR Title 810, Chapter 1 is now located at 810 KAR 6:030E, and therefore, 811 KAR 1:250 is no longer needed.

Section 1. 811 KAR 1:250. Exotic wagering, is hereby repealed.

JONATHAN RABINOWITZ, Chair
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: February 17, 2021

FILED WITH LRC: February 25, 2021 at 1:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on April 22, 2021 at 4063 Iron Works Parkway, Building B,

Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation operates to repeal 811 KAR 1:250, the substance of which will now be governed by 810 KAR 6:030E.

(b) The necessity of this administrative regulation: This regulation is necessary to prevent a direct regulatory conflict would be created through the enactment of 810 KAR 6:030E, in the absence of this concurrent emergency regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which 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 wagering on horse races. This regulation is necessary to prevent duplication and conflict with 810 KAR 6:030E, which now establishes the requirements for the operation of pari-mutuel wagering under KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation is necessary to prevent duplication and conflict with 810 KAR 6:030E, which now establishes the requirements for the operation of pari-mutuel wagering under KRS Chapter 230 and KAR Title 810, Chapter 1.

(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 not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse races in the Commonwealth, and the commission.

(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: Licensed racing associations will now be required to follow the procedures outlined in 810 KAR 6:030E.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation is not anticipated to increase compliance costs for any regulated entity, and will not increase compliance costs for the commission.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will provide clarity to racing participants, as it prevents duplication and conflict with 810 KAR 6:030E, which now establishes the requirements for the operation of pari-mutuel wagering under KRS Chapter 230 and KAR Title 810, Chapter 1.

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

(a) Initially: This regulation is not anticipated to increase compliance costs for any regulated entity or the commission.

(b) On a continuing basis: This regulation is not anticipated to increase compliance costs for any regulated entity or the commission.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation is not anticipated to increase compliance costs for any regulated entity or the commission.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation is not anticipated to increase compliance costs for any regulated entity or the commission.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

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 Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.210, 230.215, 230.361, 230.370.

(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 is not anticipated to increase 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 regulation is not anticipated to increase revenue.

(c) How much will it cost to administer this program for the first year? This regulation is not anticipated to create any cost.

(d) How much will it cost to administer this program for subsequent years? This regulation is not anticipated to create any cost.

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: N/A

**STATEMENT OF EMERGENCY
902 KAR 4:150E**

This emergency administrative regulation is being promulgated to continue the enhanced HANDS services to include tele-service delivery methods. Per guidance from the Health Resources and Services Administration, Maternal and Child Health Bureau, states are encouraged to offer prevention and family strengthening strategies virtually and through other safe means during the COVID-19 pandemic. Because the global pandemic caused by COVID-19 is ongoing, this emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to address the imminent threat to public health and safety. This emergency administrative regulation will be replaced by an identical ordinary administrative regulation.

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 4:150E. Enhanced HANDS services in response to declared national or state public health emergency.

EFFECTIVE: March 5, 2021

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)(a) 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.

(b) These services include those listed in 902 KAR 4:120, Sections 2(4), 2(5), and 4.

(c) Verbal and written consent shall be provided for each child in a shared household. For example, if the family has twins, verbal and written consent shall be provided for each baby.

(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: March 3, 2021

FILED WITH LRC: March 5, 2021 at 3:44 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 26, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 19, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency 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 emergency 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 emergency 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 the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160. 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 administrative regulation, 907 KAR 3:300, that allows 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, the Department for Medicaid Services, and local health departments providing HANDS services.

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
902 KAR 30:210E**

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 early intervention services to include tele-intervention delivery methods. The early intervention program must operate in compliance with the requirements under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1434-1444. The Office of Special Education Programing (OSEP) has offered guidance to states on implementation of IDEA Part C service provision in the current COVID-19 environment. This guidance includes the use of telephone and video conferencing methods for service delivery. Because the global pandemic caused by COVID-19 is ongoing, this emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to address the imminent threat to public health. This emergency administrative regulation will be replaced by an identical ordinary administrative regulation.

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 30:210E. Enhanced early intervention services in response to declared national or state public health emergency.

EFFECTIVE: March 5, 2021

RELATES TO: KRS 200.650-200.676, 34 C.F.R. Part 99, 34 C.F.R. Part 303, 45 C.F.R. Part 160, 20 U.S.C. 1431-1444

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provisions for providing tele-intervention services 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-intervention service” means early intervention services provided through the internet with both video and audio features and with the early intervention provider and family both present in real time.

Section 2. Enhanced early intervention services in response to a declared national or state public health emergency. (1) Early intervention services and requirements may be enhanced to allow for tele-intervention services if a national or state public health emergency has been declared.

(2) Early intervention services that are otherwise designated as face-to-face in accordance with 902 KAR 30:160 may be provided through tele-intervention with informed parental consent if:

(a) Informed parental consent is obtained verbally for the purposes of tele-intervention services;

(b) Written consent is received by the point of entry within ten (10) days of the verbal consent; and

(c) The date verbal consent is obtained is documented in the child’s electronic record.

(3) Providers utilizing tele-intervention services shall take all necessary steps to maintain confidentiality with 34 C.F.R. Part 99, 34 C.F.R. 303.402, and 45 C.F.R. Part 160.

(4) Tele-intervention services shall be reimbursed at the usual and customary rate as established in 902 KAR 30:200, Section 2.

(5) Tele-intervention services shall revert to face-to-face service delivery methods following the end of the declared national or state public health emergency.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 3, 2021

FILED BY LRC: March 5, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 26, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 19, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows for the continuation of early intervention services through tele-intervention methods during a declared national or state public health emergency

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure early intervention 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 200.660(7) authorizes the cabinet to develop procedures to ensure that early intervention services identified on the individualized family service plan are provided to eligible infants and toddlers with disabilities and their families in a timely manner. KRS 200.660(5) authorizes the cabinet to enter into contracts with service providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will help to ensure early intervention services can continue by allowing alternative methods for service delivery during the declared national or state public health emergency.

(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 approximately 5,400 children receiving early intervention services statewide. There are approximately 1,300 enrolled early intervention providers, including service coordinators.

(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-intervention 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-intervention services meets the confidentiality requirements of 34 C.F.R. Part 99, 34 C.F.R. Part 303, and 45 C.F.R. Part 160. Parents will need to make themselves available for the tele-intervention 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 early intervention services through tele-intervention 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 early intervention services. Providing services through tele-intervention 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-intervention services 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 administrative regulation, 907 KAR 3:300, that allows 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 early intervention services provided through tele-intervention methods. Other sources of funding include private insurance for reimbursement,

and 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, and the Department for Medicaid Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 200.660, 34 C.F.R. Part 99, 34 C.F.R. Part 303, 45 C.F.R Part 160, 20 U.S.C. 1431-1444.

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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. Part 99, 34 C.F.R. Part 303, 45 C.F.R. Part 160, and 20 U.S.C. 1431-1444

2. State compliance standards. Parents of children enrolled in early intervention services have certain rights as protected by the Individuals with Disability Education Act and the Family Education Rights and Privacy Act. The state must ensure all services are provided in compliance with these standards. As a business associate of the Department for Public Health, early intervention providers must ensure compliance with the Health Insurance Portability and Accountability Act of 1996 for the submission of electronic billing records.

3. Minimum or uniform standards contained in the federal mandate. In order to receive early intervention funding, the state must assure the federal Office of Special Education Programs compliance with the requirements for parental consent, prior written notice, and the confidentiality of the early intervention record. The state must also ensure the early intervention record is in compliance with the Health Insurance Portability and Accountability Act of 1996.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or

requirements, than those required by the federal mandate? No, the requirements of this administrative regulation are consistent with the requirements of 34 C.F.R. Part 99, 34 C.F.R. Part 303, and 45 C.F.R. Part 160.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as no stricter standard, or additional or different responsibilities or requirements are imposed.

STATEMENT OF EMERGENCY
922 KAR 2:415E

This emergency administrative regulation is necessary in order to ensure that licensed child care centers, certified family child care homes, and limited duration child care programs 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 remain open or reopen in the midst of the pandemic. This emergency administrative regulation also waives the fingerprint-based criminal record check required for adults working in child care institutions, as permitted by federal guidance issued pursuant to 42 U.S.C. 5141. Due to the public health emergency caused by the outbreak of COVID-19, it has been deemed unsafe to conduct in-person fingerprint-based checks. Name-based criminal background checks shall be required at this time and fingerprint-based checks shall be conducted once it is deemed safe to do so.

This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1., as the administrative regulation is necessary in order to address imminent threats to public health, safety, and welfare as child care agencies remain open or reopen in the midst of the COVID-19 pandemic. The federal Children's Bureau has also deemed it unsafe to require fingerprint-based criminal record checks during the pandemic, as demonstrated through the documentary evidence submitted with this emergency administrative regulation.

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.

Pursuant to KRS 13A.190(7)(f), this administrative regulation differs from the previously filed emergency administrative regulation governing the same subject matter, 922 KAR 2:410E, in the following manner:

Class sizes revert to the limitations in place prior to the pandemic, as established in 922 KAR 2:100 or 2:120;

Local health department personnel are approved to be in the home or center while children are present;

Classroom observations are permitted for the purpose of meeting credentialing requirements;

The prohibition on face mask lanyards is made specific to children who are three (3) years of age through kindergarten, allowing older children to wear lanyards.

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 2:415E. Enhanced requirements for certified and licensed child care and limited duration child care programs as a result of a declared state of emergency.

EFFECTIVE: March 15, 2021
RELATES TO: KRS 158.030, 199.011(4), 199.894, 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), 214.020

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. KRS 214.020 requires the cabinet to take such action as deemed efficient in preventing the introduction or spread of infectious or contagious disease within the state. This administrative regulation establishes additional health and safety standards for certified family child care homes, licensed child care centers, and limited duration child care programs due to the COVID-19 pandemic and declared state of emergency to prevent the spread of disease in child caring homes and facilities. The Children's Bureau identified the requirement of fingerprint-based checks of national crime information databases as an administrative condition that may be modified pursuant to federal authority given that a state conduct all available name-based criminal background checks for applicants during the public health emergency and conduct fingerprint-based checks as soon as it is safe to do so.

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) If a child care provider chooses to delay reopening after the pandemic closure, 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. Limited Duration Child Care Programs. (1) A limited duration child care program shall have a maximum group size of fifteen (15) children per group.

(2) A limited duration child care program shall have the same staff-to-child ratio as required for licensed child care centers pursuant to 922 KAR 2:120.

(3)(a) Except as provided by paragraph (b) of this subsection, a minimum of two (2) staff members shall be present in each room of a limited duration child care program.

(b) If all staff in the program have a completed fingerprint-based background check via the Kentucky National Background Check Program in accordance with 922 KAR 2:280, one (1) staff member shall be present in each room, subject to the staff-to-child ratios established in subsection (2) of this section.

(4) Limited duration child care programs shall be monitored by the Division of Regulated Child Care.

(5) A limited duration child care program shall only be in operation for ninety (90) calendar days before being required to close or obtain child care center licensure pursuant to 922 KAR 2:090.

Section 4. Social Distancing Requirements for Child Care Programs. (1) A child care center shall meet the maximum group size requirements established in 922 KAR 2:120.

(2) A certified family child care home shall meet the maximum group size requirements established in 922 KAR 2:100.

(3) Each child shall remain in the same group throughout the day without interacting with another group, except that sibling groups may be combined if they are the only children in the facility.

(4) A certified family child care home and a licensed child care center shall maintain the staff-to-child ratios established in 922 KAR 2:100 and 922 KAR 2:120, respectively.

(5) A child care provider may use a temporary wall to divide classroom space in order to comply with the maximum group size required by 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; and

(f) May create a classroom that does not have its own bathroom if the classroom still has access to a bathroom.

(6) Individuals approved to be inside the child care center or family child care home while children are in the facility shall include:

(a) Facility staff;

(b) A person with legal authority to enter the facility, including cabinet staff and first responders;

(c) Local health department personnel;

(d) A necessary utility worker;

(e) A professional providing medical or therapeutic services for children with special needs;

(f) A child enrolled in the facility;

(g) A parent or legal guardian of a child enrolled in the program; and

(h) 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 interacts 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 (1) group of children from another;

(d) Allow school-age children to exceed the limitation on electronic viewing and listening devices established in 922 KAR 2:120 in order to complete assigned nontraditional instruction;

(e) Utilize a centralized drop-off and pick-up location to eliminate unnecessary traffic of parents and guardians to the classrooms;

(f) Require parents and guardians to exercise social distancing of no less than six (6) feet during drop-off and pick-up;

(g) Modify traffic flow to minimize contact between children and staff to the greatest extent possible; and

(h) If providing transportation, reference the Kentucky Department of Education's pupil transportation guidance for the 2020-2021 school year and provide transportation consistent with that guidance.

(8) A child care provider may:

(a) Use virtual classroom observations for practicum students;

(b) Use virtual tours for prospective families, with permission of the families whose children may appear in the video; and

(c) Offer tours to potential clients after regular operating hours

if no children are in the facility during the tour and the provider ensures all affected areas are cleaned after the conclusion of the tour.

(9) A child care provider shall not:

- (a) Provide access to visitors or students conducting classroom observations, except as necessary to complete a final observation required for a Child Development Associate credential;
- (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; and
- (f) Permit staff to congregate in common areas and shall require they observe social distancing policies whenever possible.

Section 5. Business Practices. To the greatest extent possible, a child care provider shall:

- (1) Conduct business practices by telephone or internet;
- (2) Use digital documents instead of paper documents;
- (3) Communicate with parents and vendors by telephone and digital communication;
- (4) Utilize digital billing and invoices; and
- (5) Discourage employees from sharing phones, computers, and office supplies if duplicate materials are available.

Section 6. 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 the toys 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 the toys 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 7. 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 shall 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 (1) 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 8. 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 they meet any of the exemption criteria established in subsection (5) of this section;
 - (b) Except during planned staff breaks and lunch away from children in care and other staff; or
 - (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 children, parents, guardians, and other adults permitted into the facility.
- (3)(a) A provider shall not require a child who is not in the first grade or above to wear a face mask.
- (b) A child who is two (2) years of age or younger shall not wear a face mask due to increased risk of suffocation and strangulation.

(c) A child who is between three (3) years of age and first grade may wear a face mask if the provider and the parent or guardian complete the DCC-415, Child Care Face Mask Permission Form, to be kept on site at the facility.

(d) A child who is in first grade or above shall wear a face mask if temperament and developmental ability allow, unless the child meets any of the exemption criteria established in subsection (5) of this section.

(e) A face mask lanyard shall be prohibited for all children who are three (3) years of age through kindergarten due to increased risk of suffocation and strangulation.

(4) If a child in first grade or above or an adult refuses to wear a mask, or face shield as permitted by subsection (1)(c) of this section, the facility may refuse the individual the right to enter the facility. A provider shall establish a policy as to whether a child, parent, or guardian is allowed to enter the facility if they refuse to adhere to the facility's policies regarding the guidelines of the Centers for Disease Control and Prevention.

(5) The following shall not be required to wear a face mask:

- (a) An individual who possesses documentation from a health professional that states that wearing a face mask would represent a serious risk to the health or safety of the individual;
 - (b) An individual who is required to temporarily remove the face mask to confirm the person's identity or for security purposes;
 - (c) An individual who is deaf or hard of hearing who chooses to wear a face shield;
 - (d) A child with a documented disability or physical or mental impairment that prevents the child from safely wearing a face covering;
 - (e) Children who are actively engaged in vigorous play or exercise;
 - (f) Children who are outdoors and have six (6) or more feet of separation between each other; and
 - (g) Children who are eating, drinking, or napping, but otherwise wear a face mask.
- (6) Staff shall wear gloves when preparing meals and serving bottles. Gloves shall be changed between bottle feedings.
- (7) A provider shall ensure that gloves are available to staff engaging in high-touch activities to the greatest extent practicable,

if wearing gloves does not create additional health hazards for that activity.

Section 9. 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 10. Kentucky All STARS Program. (1) All STARS quality rating visits to be conducted pursuant to 922 KAR 2:270 shall be suspended during the public health emergency.

(2) A provider shall remain at the All STARS level that had been attained prior to the public health emergency.

(3) The expiration date of All STARS levels shall be extended by one (1) year.

(4) Providers shall receive applicable awards for their current STARS level.

Section 11. Safety and Background Check Requirements. (1) Staff with expired tuberculosis skin tests and newly hired staff shall be given an extension through the end of the public health emergency to be tested for tuberculosis.

(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 rabback 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:

(a) Undergo name-based background checks upon hiring;

(b) Not be left alone with children until the name-based background checks have been approved and returned; and

(c) Undergo fingerprint-based background checks pursuant to 922 KAR 2:280 once the checks are operational again.

(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.

Section 12. Incorporation by Reference. (1) DCC-415, "Child Care Face Mask Permission Form", 3/2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbcs/Pages/default.aspx922>

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 11, 2021

FILED WITH LRC: March 15, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 26, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 19, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date,

the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin and Krista Quarles

(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 would 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 the Novel Coronavirus Disease (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, family child care homes, and limited duration child care programs who remain open or choose to reopen during the COVID-19 pandemic.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary in order to ensure that licensed child care centers, certified family child care homes, and limited duration child care programs are operating under Centers for Disease Control and Prevention and public health guidelines to prevent the spread of COVID-19 as agencies remain open or reopen in the midst of the pandemic.

(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, family child care homes, and limited duration child care 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, temporary administrative regulation. However, this version differs from the previous version in that it reverts class sizes to the limitations in place prior to the pandemic, as required by 922 KAR 2:100 or 2:120, includes local health department personnel as approved to be in the home or center while children are present, permits classroom observations necessary for the purpose of meeting credentialing requirements, and specifies that the prohibition on face mask lanyards is specific to children who are three (3) years of age through kindergarten, allowing older children to wear lanyards. No public comments were received on the previous version of this administrative regulation, but these changes were necessary in response to Governor Beshear's announcement that child care class sizes would be returning to pre-pandemic limitations and to address issues the

Cabinet has become aware of during discussions with providers.

(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: Currently, there are zero limited duration child care programs, 1,697 licensed child care centers (with an additional 127 in temporary closure), and 220 certified family child care homes (with an additional 17 in temporary closure) 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, licensed child care centers, and limited duration child care programs will be required to meet the additional CDC and public health guidance 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. These requirements are consistent with Centers for Disease Control and Prevention (CDC) guidance at this time and many provisions of this administrative regulation are consistent with other states. Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding and Child Care and Development Funds have 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 and hopefully be able to eliminate or minimize spreading the virus and remain open.

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

(a) Initially: This administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: 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, certified family child care homes, and limited duration child care programs who choose to open or remain 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), 214.020

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), 214.020

(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:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

BOARDS AND COMMISSIONS
Board of Social Work
(As Amended at ARRS, March 8, 2021)

201 KAR 23:070. Qualifying education and clinical practice experience under supervision~~[for a certified social worker and a licensed clinical social worker and qualifying experience under supervision].~~

RELATES TO: KRS 335.010, 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

STATUTORY AUTHORITY: KRS 335.070(3), 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.080(1)(c) and 335.100(1)(a) require an applicant for a certified social worker license or a licensed clinical social worker license to have a master's degree or a doctoral degree in social work from an educational institution approved by the board. KRS 335.080(3) ~~authorizes~~allows a certified social worker to engage in the practice of clinical social work under the supervision of a licensed clinical social worker as directed by the board by promulgation of an administrative regulation. KRS 335.100(1)(b) requires an applicant for a licensed clinical social worker license to have acquired post-master's experience under approved supervision as established by the board by promulgation of an administrative regulation. KRS 335.100(3) requires a licensed clinical social worker (LCSW) to assume responsibility for and supervise the certified social worker's (CSW) practice of clinical social work as directed by the board by promulgation of an administrative regulation. This administrative regulation establishes the educational institutions approved by the board, ~~[the definitions relating to supervision,]~~ the content of a Clinical Social Work Supervision Contract, the content of a Request to Provide Supervision form, and the requirements for qualifying experience under supervision for in state and out-of-state applicants.

Section 1. Definitions. (1) "Additional supervisor" means the supervisor who holds a licensed clinical social worker [work] license issued by this board, and who assumes responsibility for the practice of a certified social worker pursuant to KRS 335.080(3), [and] 335.100(3), and this administrative regulation.

(2) "Educational institution approved by the board" means a graduate school of social work accredited by the Council on Social Work Education.

(3) ~~[(2)]~~ "Electronic supervision" means the use of computers and other electronic means by which the supervisor and supervisee use interactive video technology, in real-time, with video and audio interaction for individual and group supervision.

(4) ~~[(3)]~~ "Practice of clinical social work" means the practice of social work that focuses on the evaluation, diagnosis, and treatment of a mental disorder ~~[an emotional disorder or mental illness]~~ as related to the total health of the individual and that meets the requirements of Section 3 of this administrative regulation.

(5) ~~[(4)]~~ "Supervision" means the educational process of utilizing a partnership between an LCSW [a] supervisor and a CSW supervisee aimed at enhancing the professional development of the supervisee in providing clinical social work services.

(6) ~~[(5)]~~ "Supervisor of record" means the supervisor who holds a licensed clinical social worker [work] license issued by this board, and who assumes responsibility for the practice of a certified social worker pursuant to KRS 335.080(3), [and] 335.100(3), and this administrative regulation.

Section 2. Education Requirements. An applicant for a certified social worker license or a licensed clinical social worker license shall have a Master of Social Work degree or Doctorate of Social

Work degree from an educational institution approved by the board.

Section 3. Practice of Clinical Social Work. (1) The practice of clinical social work shall be based on knowledge of psychodynamics, human relations, crisis intervention, psychopathology, and group dynamics.

(2) A practitioner of clinical social work shall:

(a) Possess competencies including skills necessary for:

1. Individual, marital, family, and group psychotherapy; and
2. Other recognized treatment modalities; and

(b) Establish a therapeutic relationship with his or her client that includes:

~~1. Leads to correction of the dysfunction;~~

~~2. Includes:~~

~~1.[a.] Assessment and diagnosis of mental disorders using professionally recognized clinical nomenclature;~~

~~2.[b.] Safe and appropriate treatment planning that includes development, implementation, [and] modification of the plan, and coordination of treatment with other clinicians who may be involved in the client's care;[-]~~

~~3.[c.] Evaluation of progress; [and]~~

~~4.[d.] Termination of the treatment process; and~~

~~5.[3.-Is characterized by] Face-to-face contact with the client throughout the treatment process, and which may include telehealth in accordance with KRS 335.158 and 201 KAR Chapter 23[Administrative regulations of the board].~~

Section 4. Supervision. (1) A supervisor shall be a licensed clinical social worker who:

(a) Provides supervision to a certified social worker pursuant to KRS 335.080(3) and 335.100(3);

(b) Does not have:

1. An unresolved citation filed against him or her by the board;
2. A suspended or probated license; or
3. A previous or existing personal relationship with a supervisee; and

(c) Has:

1. Been engaged in the practice of clinical social work for **two (2)[three (3)]** years following licensure in Kentucky or another jurisdiction as an independent licensed clinical social worker; **or** [and]

2. Been engaged in the practice of clinical social work in another jurisdiction pursuant to Section 9 of this administrative regulation; and

~~(d)1.[3.] [2.] Completed an initial board-approved six (6) [a board-approved three (3)] hour training course on supervisory practices and methods for licensed clinical social workers relating to the requirements in KRS [Chapter] 335.010 to 335.160 and 335.990, and 201 KAR Chapter 23; and [and this administrative regulation.]~~

2.[4.] The initial supervisory training course on supervisory practice and methods for licensed clinical social workers shall be completed no later than January 1, 2022 for supervisors currently approved as of the effective date of this administrative regulation; and

~~(e);~~

~~5.[3.] In addition to the initial board-approved six (6) hour training course established in [subparagraph 2. of this] paragraph (d) of this subsection, each supervisor shall complete a board-approved three (3) hour refresher supervisory training course each licensure renewal period thereafter to maintain supervisory status with the board.~~

(2) Supervisory experience obtained in Kentucky with a supervisor who has not completed the ~~courses~~course required by subsection (1)~~(d)1.[(c)2.] and paragraph (e)[3.]~~ of this section shall not be approved by the board.[-]

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~~(3) The supervisory training course shall be completed every licensure period to maintain supervisory status with the board.]~~

~~(3) [(4)] A licensed clinical social worker shall not serve as a supervisor of record for more than six (6) certified social workers with whom he or she has a contract to be held accountable to the board at the same time.]~~

~~(5) An applicant receiving supervision outside of Kentucky shall demonstrate that his or her supervisor has been in the practice of clinical social work for a period of three (3) years following licensure as a clinical social worker or its equivalent effective at the time of the supervision.]~~

~~(4)[(6)] To be approved as a supervisor, a licensed clinical social worker who meets the requirements of this section shall submit a **Request to Provide Supervision form [written request]** to become a supervisor in Kentucky along with a copy of the **initial supervisory training course** certificate.~~

Section 5. Clinical Social Work Supervision Contract. The Clinical Social Work Supervision Contract required by KRS 335.080(3) and 335.100(3) shall be submitted to the board for approval before the certified social worker begins supervision and shall contain:

(1) The name and license number of the certified social worker supervisee;

(2) The name and license number of the supervisor of record;

(3) The name and license number of additional supervisors;

(4) The agency, institution, or organization where the experience will be received;

(5) A detailed description of the nature of the practice including the type of:

(a) Clients who will be seen;

(b) Therapies and treatment modalities that [which] will be used including the prospective length of treatment; and

(c) Mental disorders that [Problems which] will be treated;

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

(a) Number of hours of supervision per week;

(b) Amount of ~~[group and]~~ individual and group supervision; and

(c) Methodology for transmission of case information; ~~if.]~~

(7) The conditions or procedures for termination of the supervision including a provision that the terminating party shall provide at least thirty (30) days' written notice of termination to the certified social worker, supervisor of record, additional supervisor, and certified social worker's employer by the terminating party;

(8) The conditions and procedures for [self-] evaluation of the supervision process every six (6) months in which both the certified social worker and the supervisor of record evaluate areas of strength, areas of improvement, [punctuality,] and overall satisfaction with the supervision process by the supervisor and the supervisee;

(9) A statement that:

(a) The supervisor of record understands and agrees that he or she shall be held accountable to the board for the care given to the supervisee's clients;

(b) The certified social worker is an employee of an agency, institution, or organization, [who receives regular wages for a payroll period either at a regular hourly rate or in a predetermined fixed amount,] and has Social Security and income tax deducted from his or her salary;

(c) The supervisor of record and additional supervisors meet the criteria established in Section 4(1) through (4) of this administrative regulation; and]

(d) The certified social worker supervisee has completed the training course described in Section 12 of this administrative regulation; and

(e) The [A] supervisor and supervisee [may] agree to use electronic supervision, in accordance with KRS 335.158 and 201 KAR Chapter 23;

(10) [(9)] An individualized job description attached to the Clinical Social Work Supervision Contract that:

(a) Describes the nature of the clinical social work services the certified social worker supervisee shall provide to a client including

assessment, evaluation, diagnosis, and treatment of a mental disorder;

(b) Describes in detail how the requirements of Sections 6 and 7 [7 and 8] of this administrative regulation shall [will] be met; and

(c)[(b)] Is on office or agency letterhead and is signed by the executive director, the agency director, or the individual who heads the office; and]; and]

(11) Each supervisor of record and additional supervisor shall record and submit to the board documentation of the hours of individual or group supervision completed during the period of supervised clinical practice experience or upon termination of the **Clinical Social Work Supervision Contract [contract], whichever occurs first.**

(10) A copy of each supervisor's supervisory training certificate attached to the Clinical Social Work Supervision Contract.]

Section 6. Notice to Client. If an employee is practicing clinical social work under the supervision of a licensed clinical social worker, the employee shall notify in writing each client at the start of treatment during the period of the supervision. The notification shall contain:

(1) The name, office address, telephone number, email address, and license number of the supervisor of record; and

(2) A statement that the employee is licensed by the board.

Section 7. Experience under Supervision. Experience under supervision shall consist of:

(1) At least sixty (60) percent of the required experience in a direct client-professional relationship;

(2) Direct responsibility for providing clinical social work services to a specific individual or group of clients; and

(3) Broad exposure and opportunity for skill development with a variety of mental disorders [dysfunctions], diagnoses, acuity levels, and population groups.

Section 8. Supervision Requirements. (1) Supervision shall relate specifically to the qualifying supervised clinical practice experience and shall focus on:

(a) The accurate assessment and diagnosis of a client's mental disorder [client problem] leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in the practice of clinical social work and application of the Code of Ethical conduct established in 201 KAR 23:080; and

(e) The development and use of the professional self in the therapeutic process.

(2)(a) Supervision shall total a minimum of 150 [200] hours, which shall include individual supervision of at least [not less than] two (2) hours during every two (2) weeks of supervised clinical social work practice, over the two (2) year minimum time period of supervised practice experience under supervision described in KRS 335.100(3).

(b)[,] Virtual supervision may be utilized for supervision hours, if [so long as] the supervisor and supervisee can see each other [one another], face-to-face, via electronic means. [Electronic supervision may be used for no more than two (2) hours of individual supervision per month, but only after the first ten (10)] [twenty-five (25)] [hours of individual supervision hours have been obtained in face-to-face, in-person meetings where the supervisor and supervisee are physically present in the same room. A certified social worker supervisee who completes the first ten (10)] [twenty-five (25) hours] [of face-to-face individual supervision hours shall not have to repeat the face-to-face individual supervision hours if a new contract or supervisor of record is approved by the board unless agreed to by the certified social worker supervisee, supervisor of record, and additional supervisor.] [No] [More than fifty (50) percent of the individual supervision hours shall not] [may] [be obtained by electronic supervision.]

(c) Electronic supervision shall conform to state and federal

laws governing electronic practice or telehealth to ensure that confidentiality of client records and personal health information shall be maintained as required by KRS 335.158, the Code of Ethical Conduct established in 201 KAR 23:080, and other applicable state and federal laws.

(d) A supervisee shall obtain a minimum of 100 hours [not obtain more than 100 hours] of the required supervision by individual [group] supervision.

(e) A supervisee may obtain up to fifty (50) hours of group supervision.

(d) No more than fifty (50) percent of the group supervision hours may be obtained by electronic supervision.

(e) Electronic supervision shall conform to all state and federal laws governing electronic practice to ensure the confidentiality of the client's medical information is maintained as required by KRS Chapter 335 and 201 KAR Chapter 23 and by all applicable state and federal law.

(f) Group supervision shall [not] be in groups of not more than six (6) supervisees[,] and shall not include supervisees from other behavioral health professions who are attaining supervised clinical practice experience.

Section 9. **A licensed clinical social worker from another jurisdiction requesting approval to provide clinical supervision. [An applicant for licensure as a licensed clinical social worker from another jurisdiction.]** (1) An applicant who holds or has held a license to practice clinical social work or an equivalent license in another jurisdiction and has been engaged in the active practice of clinical social work [in that jurisdiction] for at least two (2) years prior to the filing of a **Request to Provide Supervision form [an application]** with the board shall meet [meets] the requirements for supervision established[set forth] in this administrative regulation unless the license, certificate, registration, or other authorization issued by the other jurisdiction:

(a) Has been expired for more than two (2) years;

(b) Is not in good standing; or

(c) Has been suspended or revoked for disciplinary reasons.

(2) An applicant who receives clinical practice experience under supervision in another jurisdiction shall demonstrate that:

(a) His or her clinical practice experience under supervision met the legal requirements of that jurisdiction; and

(b) The board shall give credit for supervision hours obtained in accordance with the legal requirements of the other jurisdiction.

(3) An applicant from another jurisdiction shall submit proof of issuance of a valid license, permit, certificate, registration, or other authorization issued by another jurisdiction that is in good standing.];

(a) Active or has been expired for less than two (2) years; and

(b) Is in good standing or was in good standing upon the date of expiration.]

(3) Documentation that establishes that an individual has been licensed in another jurisdiction at the clinical level and has been engaged in the active practice of clinical social work in that jurisdiction for at least five (5) years prior to the filing of an application with the board meets the requirement for supervision set forth in this administrative regulation.]

Section 10.[9]. Evaluation by the Board. (1) The [period of] supervised experience required by KRS 335.100(1)(b) shall be evaluated by the board according to one (1) of the methods established in this subsection.

(a) Post experience evaluation. An applicant who obtained his or her supervised experience [whose experience was obtained] while licensed in another jurisdiction [state] shall submit his or her **Request to Provide Supervision form[application]** along with documentation of supervision and qualifications of his or her supervisor[supervisor(s)].

(b) Transitional evaluation. An applicant who has accumulated an amount less than the full amount of qualifying experience while licensed in another jurisdiction [state] or while working in a clinical social work setting that does not meet the requirements under Section 7(3) of this administrative regulation shall submit his or her

Request to Provide Supervision form[application] along with documentation of supervision completed prior to the date of his or her **Request to Provide Supervision form[application]**. The applicant shall also submit with his or her **Request to Provide Supervision form[application]** a Clinical Social Work Supervision Contract under paragraph (c) of this subsection for the remainder of the supervised experience.

(c) Preapproved evaluation. Prior to beginning supervised practice experience [supervision], an applicant shall submit a Clinical Social Work Supervision Contract for the supervised experience [which will be taking place over the required time period] and the applicant shall have the contract approved by the board. This contract shall be evaluated by the board **to determine whether or not it is compliant with Section 4 and Section 5 of this administrative regulation** and shall be approved or denied[disapproved] within ninety (90) days of its submission.

(2) A certified social worker who desires to practice clinical social work that does not qualify as supervised experience pursuant to KRS 335.100(1)(b)[,] shall submit a Clinical Social Work Supervision Contract pursuant to KRS 335.080(3). This contract shall be evaluated by the board **to determine whether or not it is compliant with Section 4 and Section 5 of this administrative regulation** and shall be approved or denied[disapproved] within ninety (90) days of its submission.

(3) A certified social worker who desires to practice clinical social work that meets all the other supervised experience requirements, other than the requirement established[listed] in Section 7(3) of this administrative regulation, shall submit a Clinical Social Work Supervision Contract pursuant to KRS 335.080(3). The supervision hours obtained in this clinical setting may be considered by the board.

Section 11. **Modification of Existing Contract.** [40.] (1) Changes to Section A of the Plan of Clinical Social Work Activities of the Clinical Social Work Supervision Contract that describes the clinical setting and nature of the practice and experience that the supervisee is to obtain, as required by Section 5(5) of this administrative regulation, shall be submitted to the board for approval, **and approved, prior to implementation.**

(2) A new Clinical Social Work Supervision Contract shall be submitted to the board **immediately** for approval if the supervisee changes his or her:

(a) Supervisor of record; or

(b) Place of employment. [If the supervisee changes his or her supervisor of record, a new Contract for Clinical Social Work Supervision shall be submitted to the board for approval.]

(3) A supervisee shall notify the board in writing [by letter] of changes of additional supervisors who are not the supervisor of record, but who are identified in the Clinical Social Work Supervision Contract pursuant to Section 5(3) of this administrative regulation[,] and attach a copy of the supervisor's supervisory training certificate.

Section 12. **Supervision Training Course for a Certified Social Worker Under Supervision.**

(1) Prior to beginning supervised clinical social work practice, a certified social worker supervisee shall complete a one (1) hour **board-approved** training course on supervised clinical practice experience, provided at no cost by the board, and relating to the requirements in KRS 335.010 to 335.160 and 335.990, and 201 KAR Chapter 23; and.

(2) Submit a copy of the certificate of completion with his or her [their] Clinical Social Work Supervision Contract.

Section 13. [44.] Incorporation by Reference. (1) **The following material is incorporated by reference:**

(a) "Clinical Social Work Supervision Contract," 4/2021; and
(b) "Request to Provide Supervision", 4/2021 [3/2021][11/2020][04/2016], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310[44 Fountain Place], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Nicole S. Bearse, Board Attorney, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601; phone (502) 564-2350 or (502) 782-2856; or email nbearse@goldbergsimpson.com.

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, March 8, 2021)

201 KAR 30:040. Professional standards of practice and conduct.

RELATES TO: KRS 324A.035, 324A.050(1)(j), 12 C.F.R. 225.62-225.67, 12 U.S.C. 3331, 3336, 3339

STATUTORY AUTHORITY: KRS 324A.035(3)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the scope of practice and professional standards of conduct, and includes the supervision requirements for associate appraisers.

Section 1. USPAP Compliance. (1) Certificate holders and licensees listed in paragraphs (a) through (e) of this subsection shall comply with the Uniform Standards of Professional Appraisal Practice:

- (a) A certified general real property appraiser;
- (b) A certified residential real property appraiser;
- (c) A licensed residential real property appraiser;
- (d) An associate real property appraiser; and
- (e) A licensed nonfederal real property appraiser.

(2) The board shall evaluate an appraisal report in accordance with the USPAP in effect when the certificate holder or licensee signed the certification of the report, or when the report was prepared if the report was unsigned.

Section 2. Calculation of Square Footage. The standard for the calculation and reporting of above-grade square footage and below-grade square footage in single-family houses shall be the American National Standard for Single-Family Residential Buildings; Square Footage- Method for Calculating, ANSI Z765 2013.

Section 3. Appraisal Reporting Requirements. For each appraisal assignment that includes an appraisal management company reference as the client or agent for the client, an appraiser shall identify within the appraisal report:

- (1) The name that is on file with the board for the appraisal management company;
- (2) The Kentucky registration number that is on file with the board for the appraisal management company; and
- (3) The fee that will be paid to the appraiser for each appraisal assignment ordered by an appraisal management company, unless the appraiser is a W-2 employee of the appraisal management company.

Section 4. Licensed Nonfederal Real Property Appraiser Advertising. (1) In a written or broadcast communication, a licensed nonfederal real property appraiser shall include the following statement: "Not licensed or certified to perform appraisals for any transactions requiring a licensed or certified appraiser

pursuant to federal law or regulations."

(2) A written or broadcast communication shall include:

- (a) Appraisal reports;
- (b) Advertisements; and
- (c) Business cards and stationery.

(3) In a print advertisement, the statement shall be in letters at least fifty (50) percent the size of the largest letter in the advertisement.

(4) In a radio or television advertisement, the statement shall be stated clearly and understandably.

Section 5. Supervision of Associate Appraisers. (1) Each associate appraiser shall maintain an appraisal log for each supervising appraiser. The associate appraiser shall record the following information in the log for each appraisal:

- (a) Type of property;
- (b) Client name and address;
- (c) Address of appraised property;
- (d) Description of work performed by the associate;
- (e) Scope of the review;
- (f) Scope of the supervision by the supervising appraiser;
- (g) Number of actual hours worked by the associate on the assignment; and
- (h) Signature and state certification number of the supervising appraiser.

(2) The associate shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

(3) The supervising appraiser shall:

- (a) Have been a state certified real property appraiser for a period of at least three (3) years;
- (b) Be certified by the board prior to applying to become a supervising appraiser;
- (c) Be in good standing and shall not have received a suspension, a revocation, or other sanction that limited or prohibited that licensee's practice of real property appraising within the three (3) year period immediately prior to applying to become a supervising appraiser; and
- (d) Be responsible for the training and supervision of the associate.

(4) Only a certified general real property appraiser who satisfies the requirements of a supervising appraiser in subsection (3) of this section may supervise a person acquiring experience toward a Certified General Real Property Appraiser certificate.

(5) Any certified general real property appraiser or a certified residential real property appraiser who satisfies the requirements of a supervising appraiser in subsection (3) of this section may supervise a person acquiring experience toward a Certified Residential Real Property Appraiser certificate.

(6) The supervising appraiser shall:

(a) Accept responsibility for an associate's appraisal report by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

(b) Review reports by the associate;

(c) Accept responsibility for an associate's appraisal report by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

1. Is competent to conduct inspections independently;
2. Has met all specific requirements pertaining to property inspection established by KRS Chapter 324A and 201 KAR Chapter 30; and

3. The supervising appraiser ensures the associate is acting in accordance with the competency provision of the Uniform Standards of Professional Appraisal Practice for the property type; and
Personally inspect each appraised property and the comparable sales with the associate on the associate's first fifty (50) real property appraisal assignments, to ensure that the associate is competent and is acting in accordance with the competency provision of the Uniform Standards of Professional

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Appraisal Practice for the property type;]

(d) Be limited to a maximum of three (3) real property associates at a time;

(e) Notify the board immediately if the supervision of a real property associate has terminated; and

(f) Not be employed by an associate or by a company, firm, or partnership in which the associate has a controlling interest.

(7) A person otherwise qualified to be a supervising appraiser who has been disciplined by the board under KRS 324A.050 shall be subject to one (1) or more of the following, according to the severity of the prior violation:

(a) Prohibited from supervising associates;

(b) Limited in the number of associates to supervise; or

(c) Be required to take additional courses approved by the board before being permitted to supervise an associate.

(8) If necessary to determine the competency of the associate, the board shall request additional reports from the associate.

(9)(a) A first time supervisor and a new associate shall attend a Kentucky-specific seven (7) hour board-approved course in supervision practices prior to beginning supervision or training.

(b) To remain eligible to provide supervision, a supervisor shall attend the board-approved course in supervision practices every three (3) years.

(c) To continue logging creditable experience, an associate shall attend the board-approved course in supervision practices every three (3) years.

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

(a) "Uniform Standards of Professional Appraisal Practice", 2020-2021 [2018-2019] edition; and

(b) "American National Standard for Single Family Residential Buildings; Square Footage Method for Calculating, ANSI Z765 2013", 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1155 15th Street, N.W., Suite 1111, Washington, D.C. 20005, (202) 347-7722.

CONTACT PERSON: John Hardesty, General Counsel, Kentucky Real Estate Authority, 500 Mero Street, 2 NE 09, Frankfort, Kentucky 40601, phone (502) 782-1045, email John.Hardesty@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, March 8, 2021)**

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010~~(45)~~~~(44)~~, 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600~~(4)~~, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600~~(4)~~ authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, cackling goose, white-fronted goose, or brant.

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60.

(4) "Waterfowl" is defined by KRS 150.010~~(45)~~~~(44)~~.

Section 2. (1) Except as established in 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

(2) Hunting zones, special hunt areas, and reporting areas are established in 301 KAR 2:224.

Section 3. Season Dates. (1) The duck, coot, and merganser season shall:

(a) Begin on Thanksgiving Day for four (4) consecutive days; and

(b) Be from December 7 through January 31.

(2) The dark goose season shall be from Thanksgiving Day through February 15.

(3) The light goose season shall be from Thanksgiving Day through February 15.

(4) The Light Goose Conservation Order season shall be from February 16 through March 31.

(5) A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. Ballard Zone. (1) In the Ballard Zone, as established in 301 KAR 2:224, a person hunting waterfowl shall:

(a) Not hunt or establish a blind within:

1. 100 yards of another blind; or

2. Fifty (50) yards of a property line; and

(b) Not possess more than one (1) uncased or loaded shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in Section 3 of this administrative regulation, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks. The daily limit shall be six (6), which shall not include more than:

(a) Four (4) mallards;

(b) Two (2) hen mallards;

(c) Three (3) wood ducks;

(d) Two (2) black ducks;

(e) Two (2) redheads;

(f) One (1) pintail;

(g) One (1) [Three (3)] scaup beginning Thanksgiving Day for four (4) consecutive days and December 7 through December 17;

(h) Two (2) scaup beginning on December 18 through January 31;

(i) One (1) mottled duck; or

(j) ~~(#)~~ Two (2) canvasbacks.

(2) Coot. The daily limit shall be fifteen (15).

(3) Merganser. The daily limit shall be five (5), which shall not include more than two (2) hooded mergansers.

(4) Dark goose. The daily limit shall be five (5), which shall not include more than:

(a) Three (3) Canada geese or cackling geese, in combination;

(b) Two (2) white-fronted geese; or

(c) One (1) brant.

(5) Light goose. The daily limit shall be twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.

(6) The possession limit shall be triple the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) Sunset, except as established in 301 KAR 2:222; or

(2) One-half (1/2) hour after sunset if hunting light geese during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) The light

goose season shall be from Thanksgiving Day through February 15.

(2) The Light Goose Conservation Order season shall be from February 16 through March 31.

(3) The season for all other waterfowl shall be from Thanksgiving Day through February 15.

(4) The daily limit shall be three (3) waterfowl, except that there shall not be a limit on light geese during the Light Goose Conservation Order season.

(5) The possession limit shall be nine (9) waterfowl, except that there shall not be a possession limit on light geese during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order Season. (1) A person hunting light geese during the Light Goose Conservation Order season shall first obtain a free permit by completing the online Snow Goose Conservation Order Permit process on the department's Web site at fw.ky.gov.

(2) A person hunting light geese during the Light Goose Conservation Order season shall submit a Snow Goose Conservation Order Permit Survey to the department by April 10.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Snow Goose Conservation Order Permit", January 2014; and

(b) "Snow Goose Conservation Order Permit Survey", January 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**DEPARTMENT OF AGRICULTURE
Office of the Commissioner
(As Amended at ARRS, March 8, 2021)**

302 KAR 4:010. Renewable Chemical Production Program.

RELATES TO: KRS Chapter 13B, 246.700[246]

STATUTORY AUTHORITY: KRS 246.700(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 246.700(1)(a) requires the Department of Agriculture to promulgate administrative regulations to create and administer a renewable chemical production program. KRS 246.700(7) requires the department to cooperate with the Department of Revenue to authorize tax credits for eligible companies producing renewable chemicals. KRS 246.700(4)(a) authorizes the department to impose a nonrefundable compliance cost fee of \$500, collected by the department at the time a business applies for participation in the program. This administrative regulation establishes requirements for renewable chemicals, creation of jobs or investment of new capital related to renewable chemical production, and reporting requirements for eligible companies.

Section 1. Definitions.

(1) "Base employment" means the number of full-time employees employed on the day prior to the work start date of the new employees filling the earliest new jobs identified on the application. For applications from businesses involved in mergers, acquisitions, or federal tax identification number changes, base employment may be adjusted by the department, based on data presented.

(2) "Biobased content percentage" means, with respect to any renewable chemical, the amount, expressed as a percentage, of renewable organic material present as determined by testing representative samples using the American Society for Testing and

Materials standard D6866.

(3) "Biomass feedstock" means agricultural crop and process residues, wood and forest residues, energy crops, sugar, polysaccharide, crude glycerin, lignin, fat, grease, or oil derived from a plant or animal, or a protein capable of being converted to a building block chemical by means of a biological or chemical conversion process.

(4) "Building block chemical" means a molecule converted from biomass feedstock as a first product or a secondarily derived product that can be further refined into a higher-value chemical, material, or consumer product, such as: "~~Building block chemical~~" includes but is not limited to high-purity glycerol, oleic acid, lauric acid, methanoic or formic acid, arabonic acid, erythronic acid, glyceric acid, glycolic acid, lactic acid, 3-hydroxypropionate, propionic acid, malonic acid, serine, succinic acid, fumaric acid, malic acid, aspartic acid, 3-hydroxybutyrolactone, acetoin, threonine, itaconic acid, furfural, levulinic acid, glutamic acid, xylonic acid, xylaric acid, xylitol, arabitol, citric acid, aconitic acid, 5-hydroxymethylfurfural, lysine, gluconic acid, glucaric acid, sorbitol, gallic acid, ferulic acid, hydroxyalkanoic acids, 1 nonfuel butanol, nonfuel ethanol, biomass derived carbons, bio-oil, or constituent polymer repeating units, or [such] additional molecules as may be approved by the department after a request and review process, in accordance with Section 6 of this administrative regulation.

(5) "Commissioner" means the Commissioner of Agriculture;

(6) "Crude glycerin" means glycerin with a purity level below ninety-five (95) percent.

(7) "Date of Eligibility" means the date that a business first qualified as an eligible business by organizing, expanding, or locating in Kentucky on or after July 1, 2020, and:

(a) Filling new jobs; or

(b) Acquiring tangible capital assets as a result of substantial new capital investment.

(8) "Department" means the Kentucky Department of Agriculture.

(9) ~~(8)~~ "Food additive" means a building block chemical that is not primarily consumed as food but which, when combined with other components, improves the taste, appearance, odor, texture, or nutritional content of food. The Department ~~in its discretion,~~ shall determine whether or not a building block chemical is primarily consumed as food, based on data presented.

(10) ~~(9)~~ "Full-time employee" means a person employed for at least an average of thirty-five (35) hours per week and subject to the state tax imposed by KRS 141.020.

(11) ~~(10)~~ "High-purity glycerol" means glycerol with a purity level of ninety-five (95) percent or higher.

(12) ~~(11)~~ "New Jobs" means at least two (2) positions added for the purpose of producing renewable chemicals that are filled by a full-time employee and that increases the total employment of the eligible business above its base employment.

(13) ~~(12)~~ "Preliminary Tax Credit" means the dollar amount of tax credit certified by the department for an eligible business.

(14) "Renewable Chemical" means a building block chemical with a biobased content percentage of at least fifty (50) percent, except for: "Renewable chemical" does not include a chemical sold or used for the production of food, feed, or fuel. "Renewable chemical" includes:

(a) Cellulosic ethanol, starch ethanol, or other ethanol derived from biomass feedstock, fatty acid methyl esters, or butanol, but only to the extent that these[such] molecules are produced and sold for uses other than food, feed, or fuel;

(b) ["Renewable chemical" also includes] A building block chemical that can be a food additive as long as the building block chemical is not primarily consumed as food and is also sold for uses other than food; and

(c) ["Renewable chemical" also includes] Supplements, vitamins, nutraceuticals, and pharmaceuticals, but only to the extent that these[such] molecules do not provide caloric value so as to be considered sustenance as food or feed.

(15) ~~(13)~~ "Substantial Amount of New Capital" means the investment, after July 1, 2020, by an eligible business of at least

~~\$5,000~~ five thousand ~~(\$5000)~~ in tangible capital assets used directly in the production of renewable chemicals.

~~(16)~~~~(14)~~ "Sugar" means the organic compounds produced from dedicated crops as well as derived from starches, cellulose, and hemicelluloses, including: glucose, fructose, xylose, arabinose, lactose, and sucrose. ~~]~~

~~(15) "Date of Eligibility" means the date that a business first qualified as an eligible business by organizing, expanding, or locating in Kentucky on or after July 1, 2020 and:~~

~~(a) Filling new jobs; or~~

~~(b) Acquiring tangible capital assets as a result of substantial new capital investment.~~

~~(16) "Preliminary Tax Credit" means the dollar amount of tax credit certified by the department for an eligible business.]~~

Section 2. Tax Credit Rate Calculation. An eligible business may be approved for a preliminary tax credit, in accordance with the provisions of KRS 246.700 and this administrative regulation, calculated in an amount equal to the product of five cents (\$0.05) multiplied by the number of pounds in molecular weight of renewable chemicals produced in this state by the eligible business. This credit may be retroactive to July 1, 2020, with consent of the Kentucky Revenue Cabinet.

Section 3. Full-Time Employee Requirements.

(1) A business shall employ at least two (2) full-time employees over the base employment to meet the eligibility requirement for creating new jobs.

(2) If a full-time employee filling a new job ceases to be employed by the eligible business for any reason, the employee shall be replaced within forty-five (45) days of the employee's termination date in order for the eligible business to maintain the new job for the required period of time. The business shall notify the department within five (5)~~5~~ days after the termination date of the need to replace the terminated employee. The business shall notify the department within five (5)~~5~~ days after a replacement employee has been hired.

(3) All paid hours (work hours and paid leave hours) shall~~should~~ be included when calculating the average hours worked per week to determine if an employee meets the thirty-five (35)~~35-~~ hour minimum requirement to qualify as full-time.

Section 4. Program Applications.

(1) Applications for preliminary tax credits shall be filed with the department by the 15th day of the 1st month following the close of the preceding calendar year.

(2) Upon receipt of an incomplete application or an application without the correct fee, the department shall notify the applicant of the need for additional information or payment. The department shall consider the application abandoned if the department does not receive the required information or payment within thirty (30) days after notification of the deficiency. The thirty (30) day period shall begin on the date the notification is issued by the department.

Section 5. Required Agreement. An eligible

business~~businesses~~ shall enter into an agreement with the department to submit all information and reports necessary for the department to determine its date of eligibility, the amount of preliminary tax credit for which the business is eligible, and compliance for each year, including information on required creation or maintenance of new jobs or investment of a substantial amount of new capital.

Section 6. Requests for Eligibility of Additional Molecules and Review.

(1) The department may, after review, add additional eligible molecules to the definition of "building block chemical" upon written request by a producer of a molecule not currently included in the definition of building block chemical.

(2) The department shall accept for review requests for approval of additional molecules on a continuous basis.

(3) The department, before approval of any request for an

additional building block molecule, shall convene a committee to review the request and determine whether a requested molecule meets the definition of building block chemical and the criteria~~criteria~~ for an eligible renewable chemical. The committee shall consist of:

(a) The Director, or their designee, from the University of Kentucky Center for Applied Energy Research;

(b) The Director, or their designee, from the Conn Center for Renewable Energy Research at University of Louisville; and

(c) An employee of the department, appointed by the Commissioner.

(4) Upon approval by the committee, the department shall deem the approved molecule as included in the definition of a building block chemical.

(5) The producer of a disapproved molecule shall be allowed to appeal the decision of the committee, in accordance with Section 8 of this administrative regulation.

Section 7. Compliance Cost Fee. A non-refundable compliance cost fee of ~~\$500~~ five hundred dollars ~~(\$500)~~ shall be submitted with all applications for preliminary tax credits for eligible renewable chemical production.

Section 8. Appeal.

(1) Appeals related to the department's decisions on authorizing additional building block chemicals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner, in accordance with subsection (2) of this section.

(2) The administrative panel shall include at least one (1) person who is:

(a) A department employee; and

(b) 1. [at least one (1) person who is] Not a department employee; and

2. Not involved or invested in any eligible business seeking or receiving a tax credit for production of renewable chemicals.

(3)~~(5)~~ The members of the administrative panel shall determine if the department's action ~~[being appealed]~~ was arbitrary or capricious.

(4)~~(6)~~ Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(5)~~(7)~~ An appellant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(6)~~(8)~~ An appellant shall be allowed an opportunity to present arguments for reversing the department's action.

(7)~~(9)~~ A representative of the department shall be allowed an opportunity to present arguments for affirming the department's action.

(8)~~(10)~~ The three (3) members of the administrative panel shall rule on whether to reverse or affirm the department's action~~[the appeal]~~ by a majority vote.

(9)~~(11)~~ A majority of the three (3) members of the administrative panel may affirm the action of the department.

(12) The administrative panel shall conduct the appeal~~[Appeals of the panel shall be]~~ in accordance with KRS Chapter 13B.

Section 9. Material Incorporated by Reference. ~~[(1) The following material is incorporated by reference:]~~

(1) "Renewable Chemical Production Program Tax Credit Application", (2020)", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DEPARTMENT OF AGRICULTURE
Office of the State Veterinarian
(As Amended at ARRS, March 8, 2021)

302 KAR 22:150. Cervids.

RELATES TO: KRS 150.730-150.735, 246.030(4), 257.020, 257.030, 257.080, 257.990, Chapter 321, 9 C.F.R. 55, 81.4, 161.1-161.4

STATUTORY AUTHORITY: KRS 150.720(1), 246.295(1), 257.550, KRS 257.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.720(1), 246.295(1), and 257.550 require the Department of Agriculture, in cooperation with the Department of Fish and Wildlife Resources, to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately owned and farm-raised cervids maintained for the production of meat and other products. This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky and develop a herd monitoring system, and establishes requirements for intrastate and interstate movement of farmed cervids.

Section 1. Definitions.

~~(1) ["USDA-accredited veterinarian" means a veterinarian accredited by the USDA as category II in accordance with the provisions of 9 C.F.R. 161.1 to 161.4, and licensed to practice veterinary medicine in their home state.~~

~~(2) "Adjacent herd" means:~~

~~(a) A herd of cervids occupying premises that shares[share] a border or boundary line with premises occupied by a chronic wasting disease positive herd, including herd[a-herd] separated by a road or stream; and [~~

~~(b) A herd of cervids occupying premises that were previously occupied by a chronic-wasting-disease-positive-herd within the past five (5) years.]~~

~~(2) [(3)] "Animal identification number" or "AIN" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of fifteen (15) digits, with the first three (3) being the country code (either 840 for the United States at large or a unique code for any U.S. territory that elects to use it in place of the 840 code).~~

~~(3) [(4)] "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.~~

~~(4) [(5)] "Approved laboratory" means the National Veterinary Service Laboratory in Ames, Iowa, or any other laboratory approved by the APHIS [Administrator of the Cervid and Plant Health Inspection Service of the USDA].~~

~~(5) [(6)] "Certificate of Veterinary Inspection" or "CVI" means an official document, on a form approved by the chief animal health official of the state of origin or by USDA APHIS Veterinary Services for verification of veterinary inspection that is issued by a licensed and accredited veterinarian.~~

~~(6) [(7)] "Certified" means the status achieved by a herd that has met the standards of the Chronic Wasting Disease Herd Certification Program continuously for at least five (5) years.~~

~~(7) [(8)] "Certified Chronic Wasting Disease (CWD) Herd" or "herd" means a group of cervids under common ownership or supervision that has achieved "certified" status in the Kentucky Herd Certification Program, the federal Chronic Wasting Disease Herd Certification Program, or a state Chronic Wasting Disease Certification Program approved by APHIS or the State Veterinarian, [and that is on:~~

~~(a) One (1) or more parts of any single permitted premises (lot, far, or ranch); or~~

~~(b) Two (2) or more premises that are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.]~~

~~(8) [(9)] "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof.~~

~~(9) [(10)] "Cervid Chronic Wasting Disease Surveillance and Identification" or "CCWDSI" means the [a-Cervid-Management-Plan that includes two (2) programs]:~~

~~(a) [The] Chronic Wasting Disease HCP; and~~

~~(b) [The] Chronic Wasting Disease HMP.~~

~~(10) [(14)] "Cervid Herd Plan" means a written herd management agreement or premises management agreement:~~

~~(a) Developed by OSV in collaboration with the herd owner to address compliance issues within a HCP or HMP herd; or [and]~~

~~(b) That establishes the steps needed to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CWD [CDD] exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.~~

~~(11) [(12)] "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.~~

~~(12) [(13)] ["Chronic Wasting Disease][Herd-Certification-Program" or "HCP" means a program established by this administrative regulation to determine the CWD status of farmed cervid herds.~~

~~(14) ["Chronic Wasting Disease][Herd-Monitoring-Program" or "HMP" means a program established by this administrative regulation to monitor farmed cervids in harvesting facilities for CWD.~~

~~(15) "Farmed cervid":~~

~~(a) Means cervid livestock that are enrolled in a CCWDSI program and are maintained for propagation, selling, trade, or barter or for taking by any harvest or slaughter method; and~~

~~(b) Does not mean any cervid that has not originated from and been continuously maintained within a herd that is enrolled in and complies with a HCP or HMP.~~

~~(13) [(16)] "Exposed" means a cervid that is part of a CWD positive herd, or that has been exposed to a CWD-positive cervid or contaminated premises within the previous five (5) years.~~

~~(14) [(17)] "Harvest" means to slaughter or take by hunting farmed cervids for meat and other products.~~

~~(15) "Herd Certification Program" or "HCP" means a program established by this administrative regulation to determine the CWD status of farmed cervid herds.~~

~~(16) "Herd Monitoring Program" or "HMP" means a program established by this administrative regulation to monitor farmed cervids in harvesting facilities for CWD.~~

~~(17) [(18)] "Identification" means a device or means of identification approved for use under this administrative regulation by the State Veterinarian.~~

~~(18) [(19)] "Interstate movement" means movement from another state into or out of Kentucky.~~

~~(19) [(20)] "Intrastate movement" means movement solely within the boundaries of Kentucky.~~

~~(20) [(21)] "Licensed and accredited veterinarian" means a veterinarian:~~

~~(a) Approved by the Deputy Administrator of USDA APHIS-VS and the State Veterinarian, in accordance with 9 C.F.R. Part 161, to perform functions required by cooperative state-federal cervid disease control and eradication programs; and~~

~~(b) Who is licensed to practice veterinary medicine in Kentucky under KRS Chapter 321. [~~

~~(21) [(22)] "Move" means to carry, enter, import, [mail-] ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.~~

~~(21) [(22)] [(23)] "National Uniform Eartagging System" or "NUES" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal that is USDA approved.~~

~~(22) "Office of State Veterinarian" or "OSV" means that office within the Kentucky Department of Agriculture as established in KRS 246.030(4). [~~

~~(24) "Official identification" means a device or means of cervid identification approved for use under 9 C.F.R. Part 55 by APHIS and the state veterinarian to uniquely identify individual cervids.]~~

~~(23) [(25)] "Official Chronic Wasting Disease test" or "CWD test"~~

means any test for the diagnosis of Chronic Wasting Disease approved by APHIS and conducted in a laboratory approved by APHIS in accordance with 9 C.F.R. Part 55.

~~(24)~~~~(26)~~ "Official eartag" means an identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag depend on the needs of the users, subject to the approval of the USDA Administrator. The official eartag is tamper-resistant and has a high retention rate in the animal.

~~(25)~~~~(27)~~ "Official identification number" ~~[or "OID"]~~ means a nationally unique number that is permanently associated with a cervid and complies with:

- (a) National Uniform Eartagging System (NUES);
- (b) Animal Identification Number (AIN); or
- (c) Any other numbering system approved by the Administrator for the official identification of animals, including a group identification number.

~~(26)~~~~(28)~~ **"Office of State Veterinarian" or "OSV" means that office within the Kentucky Department of Agriculture as established in KRS 246.030(4).**

~~(27)~~~~(29)~~ "Owner" is defined by KRS 257.010(14).

~~(27)~~~~(28)~~~~(30)~~ "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

~~(28)~~~~(29)~~ **"Physical inventory" means an inventory that confirms individual identification of each cervid by hands on observation to include physical or chemical restraint as needed.**

~~(29)~~~~(31)~~ "POL" or "Premises of Origin Location" means the land, farm, or specific parts of a farm where the cervid are physically located. ~~]~~

~~(30)~~~~(32)~~ "Positive" means a cervid has had a diagnosis of CWD confirmed by means of two (2) official CWD tests.

~~(30)~~~~(31)~~~~(33)~~ "Premises identification number" or "PIN" means a nationally unique number allocated to a premises assigned by a state or federal animal health official and: ~~[-Tribal, or federal animal health authority to a premises that is, in the judgment of the State, Tribal, or federal animal health authority, a geographically distinct location from other premises. The PIN can be used:]~~

(a) Is used in conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal; and

(b) Is the number system permitted by the state of origin specifically as a CWD program site.]

(b) ~~As a component of a or identification number (GIN).]~~

~~(31)~~~~(32)~~~~(34)~~ "Quarantine" means an imposed restriction prohibiting movement of live or dead cervids, or parts thereof, to any location without specific written approval of the State Veterinarian.

~~(32)~~~~(33)~~~~(35)~~ "Radio Frequency Identification Device" or "RFID" means a device electronically encoded with a unique identification and that complies with the applicable International Standards Organization (ISO) standards and that bears the visual number.

~~(33)~~~~(34)~~~~(36)~~ "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Guam.

~~(34)~~~~(35)~~~~(37)~~ "USDA" means the United States Department of Agriculture.

(35) "USDA-accredited veterinarian" means a veterinarian accredited by the USDA as category II in accordance with the provisions of 9 C.F.R. 161.1 to 161.4, and licensed to practice veterinary medicine in their home state.

~~(36)~~ "Visual inventory" means an inventory done when distance observation of identification of identification devices is possible.

Section 2. All Farmed Cervids Shall Be in a Program. Every farmed cervid in Kentucky shall be enrolled in either the Chronic Wasting Disease Herd Certification Program or the Chronic Wasting Disease Herd Monitoring Program. ~~[All farmed cervids~~

~~shall follow the Chronic Wasting Disease Program Standards from the USDA.]~~

Section 3. Required CWD program Training.

(1) Prior to initial enrollment in a CWD program, a minimum of one (1) hour initial educational training provided by the OSV shall [is required to] be completed.

(2) Supplemental trainings provided by OSV shall be required when there is a change in Chronic Wasting Disease prevalence, change in Kentucky program administrative regulations, or a change in USDA CWD program standards, or any other time deemed necessary by the State Veterinarian to prevent the spread of disease. Notice for any additional training shall [will] be provided at least thirty (30) days in advance of the [such] date.

(3) All persons with a HCP or HMP permit at the date this administrative regulation becomes effective shall complete an educational training for one (1) hour prior to their renewal for the following year.

Section 4[3]. Chronic Wasting Disease Herd Certification Program (HCP).

(1) A HCP permit shall be required to participate in the HCP program. A HCP permit shall be valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HCP shall submit:

1. A complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian certifying that the veterinarian and the herd owner have a valid veterinarian-client-patient relationship; and

3. An initial [A] fee of \$150. Renewal fees the next year are described in subsection (2) of this section.

(b) The OSV shall grant a HCP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees shall be returned to the applicant without approval. The OSV shall not approve any application if the applicant owes fees or fines to the KDA.

(c) A HCP participant whose permit expires prior to renewal shall be subject to the penalties established in Section ~~19[16]~~ of this administrative regulation.

(2) Annual HCP permit renewal required. Fees shall be based on the officially tagged inventory submitted in paragraph (e) of this subsection. Renewal applicants shall:

(a) Submit a complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application by November 30 of each year;

(b) Pay a fee of \$135 for herds up to fifty (50) cervids, \$250 for herds between fifty-one (51) and 100, or \$450 for herds containing more than 101 cervids, for applications submitted prior to December 1, preceding the applicable permit year;

(c) Pay a fee of \$150 for herds up to fifty (50) cervids, \$275 for herds between fifty-one (51) and 100, or \$500 for herds containing more than 101 cervids, for applications submitted between December 1 and December 31, preceding the applicable permit year;

(d) Pay a fee of \$250 for herds up to fifty (50) cervids, \$375 for herds between fifty-one (51) and 100, or \$600 for herds containing more than 101 cervids, for applications submitted late, January 1 and after of the applicable permit year; and

(e) Submit a current herd inventory as of the time of application submission, and the most recent reporting documents due to the OSV as required in subsection (3)(c) of this section if not already on file with the OSV.

(3) HCP Requirements.

(a) Herds enrolled in this program shall comply with the requirements established in this section and 9 C.F.R. Part 55, Subpart B, and shall follow the USDA Chronic Wasting Disease Standards, and the RFID official identification requirements of Section 8.

1. After an initial permit is issued, the participant shall enroll the

herd into the HCP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines established in this administrative regulation.

2. After the first year in the HCP, the participant shall:

a. Conduct the physical inventory and continuously identify cervids as required;

b. Provide any records required by this administrative regulation to the OSV for the cervids; and

c. Maintain and complete the provisions of this administrative regulation and a Cervid Herd Plan, if developed.

(b) Cervid identification requirement.

1. Each cervid shall have at least two (2) forms of cervid identification prior to or at the time of the annual herd inventory, one (1) of which shall be a RFID [an] official identification and one (1) form shall be a visual type of identification, both of which shall be unique to that cervid within the herd.

2. A cervid of any age shall have official identification before being moved from the premises for any purpose.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2. a. An annual herd inventory shall be conducted that reviews all records and includes observation of all cervids in an enclosed area, including physical restraint if necessary, to reconcile all visible identification devices with available records. This required inventory shall be conducted in January, February, March, or April.

b. Beginning May 1, the herd shall be placed in quarantine and no movement shall be permitted until the physical inventory is completed for those herds not completing a physical inventory January, February, March, or April.

3. The state veterinarian or an APHIS representative may request additional physical inventories to verify herd compliance with program standards.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for visual or physical inspection.

5. Additional herd inventory record inspections and reviews shall be conducted quarterly at the cervid premises or at another location mutually agreed to by the owner and the OSV.

(d) Herd Additions.

1. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state, approved by the OSV, with an USDA-approved CWD Certification Program in which CWD has never been confirmed. [New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP or from a herd in a state with a USDA-approved CWD Certification Program where chronic wasting disease has never been confirmed.]

2. New cervids shall not be introduced into the herd unless it has been approved by the State Veterinarian.

3. If cervids are introduced from a herd of lower status, the receiving herd status shall revert to the lower status.

(e) HCP Reporting requirements. The owner shall report to OSV any cervids that escape or disappear and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. The reporting time frame shall be:

a. For cervids that escape or disappear, a report shall be made within forty-eight (48) hours;

b. For cervids taken by harvest, a report shall be submitted within seven (7) days; and

c. For cervids that die from illness or any other reason, a report shall be submitted within seven (7) days, [-and

d. A confirmation that population changes have not occurred in the preceding calendar month if there were no events that required reporting as established in clauses a. through c. of this subparagraph. This report shall be submitted to the OSV by the close of business on the first of each month for the activities of the previous calendar month.]

2. The report shall include all applicable identification numbers, including the visual tag and the date of the death, disappearance, or escape.

3. Cervids that die or are harvested shall have the required tissue specimens collected and submitted for Chronic Wasting Disease testing except if exempted in writing by request to, and approval of, the OSV. [by 9 C.F.R. 55.23.] Exemptions shall/will only be granted in extenuating circumstances, such as natural disaster or a disease event.

4. ~~An~~ [In accordance with 9 C.F.R. 55.23, an] APHIS or OSV representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

5. Cervid escapes return protocol.

a. Cervids that escape may be returned to the herd only iff/when:

(i)[a.] Within seventy-two (72) hours, the cervids are/must be re-captured and the fence is/must be repaired and secured to prevent further escape and meet the requirements established by/ef/ Kentucky Department of Fish and Wildlife Resources in 301 KAR 2:083. Any cervid recaptured after seventy-two (72) hours shall be introduced back into the herd only with written permission of the OSV; and

(ii)[b.] Within seven (7) days of initial escape, an updated inventory is/must be provided to the OSV representative in writing.[-and]

b. An [-c.] OSV representative may require physical inspection of cervids to confirm inventory.

(f) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(g) An owner maintaining separate herds shall comply with the separate-herd requirements established in 9 C.F.R. 55.23.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements established in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids including the official identification[OID] and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd including:

a. The official identification[OID], species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intrastate or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd, including:

a. The date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment; and

b. A cervid's death or harvest on the premises, including the date of death, the apparent cause of death; the cervid's age, sex, and state-federal official individual cervid identification; date and laboratory submitted for CWD testing, if required; and the disposition of the cervid's carcass. If the carcass was removed from the premises, the record shall identify the carcass' destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from, for example, tags and electronic implants) associated with each cervid.

(j) Herd status levels.

1. Upon a herd being first enrolled in the Herd Certification Program, the herd shall be placed in first-year status, except that if the herd is comprised solely of cervids obtained from herds already enrolled in the Herd Certification Program, the newly enrolled herd

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shall have the same status as the lowest status of any herd that provided cervids for the herd.

2. If a herd continues to comply with the requirements of the Herd Certification Program, the herd status shall be upgraded by one (1) year on the anniversary of the program enrollment date.

3. One (1) year after the date a herd was placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as the herd remains enrolled in the program, if its status is not revoked or suspended in accordance with this administrative regulation or 9 C.F.R. 55.24.

4. A herd owner shall be issued a certificate of "Certified" status upon completing the Herd Certification Program requirements established in this administrative regulation.

5. Renewal of a Certified Cervid Herd. A herd shall be certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and administrative regulations pertaining to holding cervids shall be required.

6. The herd enrollment date shall be the latter date of:

a. The physical inventory being completed in accordance with paragraph (c) of this subsection; or

b. The initial cervid delivery.

(k) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection by an OSV certified CWD sample collector, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within seven (7) days of death and collection. If incidents of mass casualty or mortality events are confirmed by the OSV, the OSV may waive the testing requirements for all cervids and instead only require testing based on risk.

(l) USDA Chronic Wasting Disease Program Standards deficiencies may, based on the nature of the deficiencies, require a Cervid Herd Plan in lieu of, or in addition to, administrative penalties.

Section 5[4]. Chronic Wasting Disease Herd Monitoring Program (HMP).

(1) A HMP permit shall be required to participate in the HMP program. A HMP permit shall be valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HMP program shall submit:

1. A complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and

3. A fee of \$500.

(b) OSV shall grant the HMP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees shall be returned to the applicant without approval. The OSV shall not approve any application if the applicant owes any fees or fines to the KDA.

(c) HMP participants whose permit expires prior to renewal shall be subject to the penalties in Section 19[46] of this administrative regulation.

(2) Annual HMP permit renewal required. Renewal applicants shall:

(a) Submit a completed Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application by November 30 of each year.

(b) Pay a fee of \$500.

(c) Submit a current herd inventory as of the moment of application, and the most recent reporting documents due to the OSV as required in subsection (4)(c) of this section if not already on file with the OSV.

(d) The permit shall be effective January 1 through December 31 of each year.

(3) Restrictions and limitations on HMP-enrolled cervids and herds.

(a) A cervid shall not leave an HMP-enrolled herd alive.

(b) A cervid shall not be moved to another HMP-enrolled herd.

(c) A HMP herd, or any cervid within a HMP-enrolled herd shall not be eligible to enter the HCP.

(4) HMP Requirements.

(a) Herds enrolled in this program shall comply with the requirements established in this section ~~and the requirements in 9 C.F.R. Part 55, Subpart B~~.

1. After an initial permit is issued, the participant shall enroll the herd into the HMP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines established in this administrative regulation.

2. After the first year in the HMP, the participant shall:

a. Conduct the inventory and continuously identify cervids as required;

b. Submit records to the OSV for the cervids that are required in this administrative regulation; and

c. Maintain and complete the provisions of this administrative regulation and a herd-specific Cervid Herd Plan, if developed.

(b) Cervid identification requirement.

1. Each cervid twelve (12) months of age or older shall have at least two (2) forms of cervid identification, one (1) of which shall be a RFID ~~an~~ official identification and one (1) form shall be a visual type of identification, which shall be unique to that cervid within the herd.]

~~2. A cervid of any age shall have official identification before being moved from the premises for any purpose.]~~

3. Any untagged cervid that dies or is harvested shall be officially identified and shall be CWD tested.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2. An annual herd inventory shall be conducted and submitted to the OSV that reviews all records and documents that would change the baseline herd inventory.

3. The state veterinarian or an APHIS representative may request a visual or physical inventory to verify herd compliance with program standards.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for inspection.

(d) Herd Additions. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state, approved by the OSV, with an USDA-approved CWD Certification Program in which CWD has never been confirmed.

(e) If evidence of natural additions are found, a Cervid Herd Plan shall be developed to eliminate future breeding. [No] Intentional breeding shall not be [is] allowed.

(f) ~~[(e)]~~ HMP Participant Reporting requirements. The owner shall report to the OSV any cervids that escape or disappear, and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. This report shall be submitted to the OSV by the close of business on the first business day of each month for the activities of the previous calendar month.

2. The report shall include applicable cervid identification numbers, including the visual tag; the date of the death, disappearance, escape; and the dates the CWD tests were submitted for testing.

3. All cervids that die or are harvested shall have the required tissue specimens collected and submitted for CWD testing.

4. In accordance with 9 C.F.R. 55.23, an APHIS or OSV representative shall investigate herds that fail to comply with testing requirements, which shall be considered noncompliance. ~~[and shall evaluate the herd's status.]~~

5. Cervid escapes return protocol.

a. Cervids that escape may be returned to the herd only ~~if/when~~.

(i)[a.] Within seventy-two (72) hours, the cervids are [must be] re-captured and the fence is [must be] repaired and secured to prevent further escape and meet the requirements established

~~by [ef]~~ Kentucky Department of Fish and Wildlife Resources *in 301 KAR 2:083. Any cervid recaptured after seventy-two (72) hours shall be introduced back into the herd only with written permission of the OSV; and*

~~(ii) [b.]~~ Within seven (7) days of initial escape, an updated inventory ~~is [must be]~~ provided to the OSV representative in writing. ~~;~~ ~~and]~~

~~b. An [c.]~~ OSV representative may require physical inspection of cervids to confirm inventory.

~~(g) [(f)]~~ Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease. [

~~(g) An owner maintaining separate herds shall comply with the separate herds requirements established in 9 C.F.R. 55.23.]~~

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements established in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids, including the official identification [OID], and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd, including:

a. The official identification [OID], species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intra- or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd including a record of each cervid that died or was harvested on the premises including:

a. The date of death;

b. The apparent cause of death;

c. The cervid's age and sex;

d. State-federal official individual cervid identification, date, and laboratory submitted for CWD testing, if required; and

e. The disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from, for example, tags and electronic implants) associated with each cervid.

~~(i) [(k)]~~ Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within thirty (30) days of collection.

Section 6[5]. Testing, Investigation, and Quarantine.

(1) Surveillance testing procedures.

(a) CWD testing shall be in accordance with the procedures established in 9 C.F.R. 55.8.

(b) A positive or non-negative [diagnosis] of CWD by an approved laboratory shall be sent to the National Veterinary Service Laboratory for confirmation.

(c) If required tissues from test eligible cervids are not submitted for laboratory diagnosis by the cervid owner, the state veterinarian shall revoke the permit or implement a mutually agreed upon Cervid Herd Plan.

(2) Investigation of CWD-positive cervids.

(a) An epidemiological investigation in accordance with 9 C.F.R. 55.23 shall be conducted by OSV or APHIS VS for all cervids diagnosed at an approved laboratory CWD positive or suspect.

(b) All CWD-positive herds and all source, exposed, and adjacent herds and the premises where these herds are located shall be investigated epidemiologically by OSV.

(3) Duration of Quarantine. Quarantines issued by the State Veterinarian for CWD in accordance with this administrative regulation shall be removed as established in paragraphs (a) and (b) of this subsection[section].

(a) A premises shall not be removed from quarantine until after completion of the cervid herd plan and five (5) years of compliance with all provisions of 9 C.F.R. Part 55.

(b) An adjacent or exposed herd or premises may be removed from quarantine only after an epidemiological investigation and by order of the OSV.

Section 7. CWD Sample Collection Training.

(1) Required CWD samples shall/must be collected by a licensed accredited veterinarian or an individual certified by the OSV.

(2) To become certified, an individual shall/must:

(a) Submit a request for certification to the OSV at Statevet@ky.gov or contact the OSV; ~~;~~ ~~and~~

(b) Attend a training course offered by the OSV.

(3) Certification is valid for five (5) years from the date of training course or until new sample collection protocols have been mandated by OSV or USDA. Renewal certification shall require[requires] completion of a renewal form.

(4) Certified individuals shall comply with CWD collection and submission protocols. Failure to submit quality samples may result in revocation of certification status.

(5) Certified individual shall maintain record of sample collections for ten (10) years. Records shall include a copy of the laboratory submission form or a generated report which contains the following:

(a) Date of sample collection;

(b) Premises Name and City where sample collection occurred;

(c) List of official identification devices of each sample;

(d) Number of samples collected; and

(e) Name of Laboratory where samples were submitted.

Section 8[6]. Certificate of Veterinary Inspection.

(1) A Certificate of Veterinary Inspection shall remain valid for thirty (30) days after date of inspection.

(2) A CVI shall contain:

(a) Identification of each animal recorded on the certificate;

(b) A RFID and visual identification for each cervid; [~~An official identification (OID) for each cervid;~~]

(c) The species, breed, sex, and age of each cervid;

(d) The name and address of the owner, cosigner, or agent shipping the cervid, and phone number of each;

(e) The location from which the animal is loaded for movement;

(f) The name and address of the consignee or person receiving the cervid;

(g) The location at which the animal will be received;

(h) The purpose of the movement and the total number of cervids;

(i) All non-applicable data fields crossed out by the USDA-accredited Veterinarian prior to signing;

(j) The movement permit number issued by the OSV;

(k) The following statement or one substantially similar: "I certify as an accredited veterinarian that the above described animals have been inspected by me on this date and that they are not showing signs of infection or communicable disease. The vaccinations and results of tests are as indicated on the certificate. The animals listed on this certificate meet the state of destination requirements and federal interstate requirements"; and

(l) The signature, USDA category II accreditation number, and phone number of the veterinarian.

(3) Paper submitted Certificate of Veterinary Inspection.

(a) The first physical page shall be mailed or otherwise

delivered to the office of the state veterinarian in the origin state [OSV] within seven (7) days of the date it is written.

(b) An exact replica image (a scan in a PDF) of the first page may be submitted in lieu of the first physical page required in paragraph (a) of this subsection by submitting via electronic mail within seven (7) days of the date it is written to Statevet@ky.gov.

(c) The second page shall physically accompany the cervid being moved and be readily accessible during the movement.

(d) The third page shall be sent to the Animal Health Official in the state of destination within seven (7) days of the date it is written.

(e) The fourth page shall be retained by the issuing veterinarian for at least five (5) years from the date of issuance.

(f) A legible copy of any supplemental pages shall be stapled to the original and each copy of the CVI.

(4) Electronically submitted CVIs.

(a) Certificate of Veterinary Inspection and Permit may be submitted via an importable format as approved by the OSV, [allowed by USAHA AHSIS Subcommittee on Data Standards' "standard XML schema document."]

(b) Cervids moving with an electronically submitted Certificate of Veterinary Inspection shall be accompanied by a paper copy or have the electronic material stored on a device that may be read immediately upon request.

(5) A person shall not issue a CVI bearing the seal of the Commonwealth of Kentucky unless that person is a Kentucky licensed and USDA category II [-] accredited veterinarian.

Section 9[7]. Movement Permit.

(1) A person shall not move a cervid within or into Kentucky without first obtaining a permit from the OSV at least forty-eight (48) hours prior to the movement, unless approved in writing by the OSV after consideration of the risks involved.

(2) Proof of required vaccinations or other applicable health practices to ensure disease prevention based on place or origin, as found on the Web site at www.kyagr.gov, shall be completed prior to permit issuance. Instructions for a permit may be obtained on the Web site.

(3) Movement permit instructions may be obtained by calling OSV at 502-573-0282, Monday through Friday, 8 a.m. EST to 4:30 p.m. EST.

(4) Required testing or vaccination. Required tests and vaccinations shall be performed or verified by a:

(a) Licensed and USDA category II[-] accredited veterinarian;

(b) Designee of the State Veterinarian; or

(c) Designee of the federal government.

(5) Required tests shall be conducted at no expense to the Commonwealth of Kentucky.

(6) Required laboratory tests shall be conducted in a state-federal approved laboratory.

Section 10[8]. Official Identification and Other Required Identification.

(1) Beginning July 1, 2020, RFID official identification shall be applied in any initial tagging event, retagging event, or anytime a cervid is restrained by any method, including permitted movements. All imported cervids shall require an RFID at the time of importation beginning July 1, 2020. This RFID shall be cross referenced with any other existing official identification at the time of application. Existing official identification shall not be removed without the prior written approval of the OSV.

(2)[(4)] Methods of official identification. An official individual identification shall consist of a set of alphanumeric characters or physical characteristics that are uniquely associated with an individual cervid and that constitute:

(a) Official USDA NUES that was applied prior to June 30, 2020; and

(b) An RFID that [if]:

1. The RFID uniquely identifies the animal and is USDA approved;

2. The RFID is attached to[or implanted in] the animal;

3. The RFID is registered to a PIN or to a person; and

4. Only one (1) official RFID is placed on an animal.

(3)[(2)] Use of more than one (1) official eartag.[

(a) ~~More than one (1) official eartag may be used by the OSV for tagging events required by subsection (6) of this section.]~~

(a) Any [(b)-The] person applying the additional official eartag shall record the following information about the event, and submit to the OSV within seven (7) days the required information, and maintain the record for at least ten (10) [five (5)] years:

1. The date the additional official eartag is added;

2. The reason for the additional official eartag device; and

3. The official identification numbers of the new official eartag and the one or ones already attached to the animal.

(b) [(e)] An eartag with an Animal Identification Number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to a cervid that is already officially identified with one (1) or more National Uniform Eartagging System tags. The person applying the Animal Identification Number eartag shall record the date the Animal Identification Number tag is added and the official identification numbers of any official eartags and shall maintain those records for at least ten (10) [five (5)] years.

(4)[(3)] Removal or loss of official identification devices.

(a) [~~Official identification devices shall provide permanent identification of cervids and ensure the ability to find the source of animal disease outbreaks.~~] Removal of official identification [these devices] shall be prohibited, except as approved in writing by the OSV or a USDA area veterinarian in charge if a device needs to be replaced.

(b) If a cervid loses an official identification device [~~and needs a new one~~]:

1. A replacement tag with a different official identification number may be applied. The person applying a new official identification device with a different official identification number shall record the following information about the event and maintain the record for at least ten (10) [five (5)] years:

a. The date the new official identification device was added;

b. The official identification number on the device; and

c. The official identification number on the old device, if known.

2. Replacement of a temporary identification device with a new official identification device shall be considered to be a retagging event and shall be noted on the Retag Form.[

(4) ~~Circumstances under which OSV may authorize replacement of an official identification device include, for example:~~

(a) ~~Deterioration of the device that or the number can no longer be read;~~

(b) ~~Infection at the site where the device is attached, necessitating application of a device at another location (for example, a slightly different location of an eartag in the ear);~~

(c) ~~Malfunction of the electronic component of a radio frequency identification (RFID) device; or~~

(d) ~~Incompatibility or inoperability of the electronic component of an RFID device with the management system or unacceptable functionality of the management system due to use of an RFID device.~~

(e) ~~982 tags may be replaced with RFID after written permission from the OSV has been given.]~~

(5) Removal of official identification[OID], without prior written approval of the OSV shall be strictly prohibited.

(6) Replacement records required. Any time an official identification device is replaced, as authorized by OSV or the USDA, the person replacing the device shall record the following information about the event and maintain the record for at least five (5) years:

(a) The date on which the previous device was removed;

(b) Contact information for the location where the device was removed;

(c) The official identification number (to the extent possible) on the device that was removed;

(d) The type of device removed (for example, metal eartag or RFID eartag);

(e) The reason for the removal of the former device;

(f) The new official identification number on the replacement device; and

(g) The type of replacement device that was applied to replace

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the former device.]

~~(7) Beginning July 1, 2020, RFID OI-D shall be applied in any initial tagging event, retagging event, or anytime a cervid is restrained by any method, including permitted movements. All imported cervids shall require an RFID at the time of importation beginning July 1, 2020. This RFID shall be cross-referenced with any other existing OI-D at the time of application. Existing OI-D shall not be removed.]~~

Section 11[9]. Premises of Origin Location.

(1) POL information shall be provided by the person seeking the permit for the premises from which the cervids are to be loaded upon seeking a movement permit.

(2) The POL of the specific location the cervids were loaded shall include:

(a) A PIN issued by the USDA or the Animal Health Official in the state of origin or a LID; and

~~(b)[(2)]~~ The owner at the time of movement and that owner's address and contact information.

Section 12[Section 10]. Requirements for Interstate Movement into Kentucky.

(1) A person or hauler shall not move a cervid into Kentucky without first obtaining a CVI from a licensed and USDA category II accredited veterinarian; ~~and~~

~~(2) Obtained a movement permit from the OSV at least forty-eight (48) hours prior to movement and scheduling by the OSV, that includes a scheduled appointment for delivery of cervids between the hours of 6 a.m. and 9 p.m.; and~~

~~(3) [(2)]~~ An OSV representative, USDA representative, or an USDA category II[-] accredited veterinarian shall be present for the unloading of the cervids at the point of destination at the time scheduled in (2) and shall be responsible for removing the transport seal and observing the offloading.

~~(4) [(3)]~~ An entry permit shall not be issued for a cervid that does not have certified status or an equivalent status, as documented by a certificate issued in accordance with 9 C.F.R. 81.4. An entry permit shall not be issued for a cervid that originated in, or at any time resided, in a state where CWD has been confirmed in either wild or captive cervids.

~~(5) [(4)]~~ An entry permit shall not be issued for a cervid that is not:

(a) Negative to an official tuberculosis test within ninety (90) days of entry; or

(b) Originating from a cervid tuberculosis accredited herd. The herd accreditation number and the last herd test date shall be listed on the CVI.

Section 13[Section 14]. Requirements for Movement Within Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement within Kentucky.

(2) A CVI shall not be required if the movement is from the same herd to a different permitted premises within the same farm, if the cervid has official identification [OID], prior to the movement.

(3) Movement shall not commence until forty-eight (48) hours after the issuance of the permit.

(4) An OSV representative, USDA representative, or an USDA category II[-] accredited veterinarian shall be present at the loading at the point of origin, or the unloading of the cervids at the point of destination for movements to a different premises. ~~[For movements established in subsection (2) of this section, no a designee at time of unloading shall not be required.]~~

~~(5) The requirements of this section shall be the responsibility of the owners, agents, and haulers of the moved cervid.~~

Section 14[Section 12]. Requirements for Movement for Export from Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement from Kentucky.

(2) Movement shall not commence until forty-eight (48) hours after the issuance of the permit by the OSV and scheduling.

(3) All cervids being exported from Kentucky shall have

movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection.

~~(4) A cervid shall not leave Kentucky until:~~

~~(a) The CVI is written to meet the state of destination requirements by a Kentucky licensed category II veterinarian; ~~f;~~ and~~

~~(b) The owner, agent, or hauler contacts the OSV designee at least forty-eight (48) hours in advance of the movement to schedule an appointment for departure inspection and movement documentation between the hours of 6 a.m. and 9 p.m.~~

Section 15[Section 13]. Requirements for Movement Through Kentucky. Cervids moving through Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection. A Kentucky movement permit shall not be required for direct movement through Kentucky. Persons directly moving cervids through Kentucky may voluntarily obtain a permit from the OSV.

Section 16. Reindeer Exhibition.

~~(1) Any reindeer exhibiting in the state of Kentucky shall ~~must~~ obtain written permission of the OSV.~~

~~(2) Requests for an exhibition permit shall be made to the OSV in writing or electronically at statevet@ky.gov a minimum of ten (10) business days prior to the movement to the exhibit.~~

Section 17[14]. Voluntary Accreditation and Certification Programs.

(1) Cervid owners wishing to seek a voluntary herd certification for brucellosis shall follow the provisions established in APHIS 91-45-16, Brucellosis in Cervidae.

(2) Cervid owners wishing to seek a voluntary herd accreditation for tuberculosis eradication shall follow the provisions established in APHIS 91-45-011, Bovine Tuberculosis Eradication.

(3) After the completion of terms in APHIS 91-45-011 or APHIS 91-45-16, the OSV shall issue a certificate, for the respective disease, that shall be valid in Kentucky for a period of thirty-six (36) months from issuance.

Section 18[15]. Retention of Records.

(1) Intrastate movement or sales documents shall be maintained by both the buyer and the seller for at least ~~ten (10) [five (5)]~~ years after the movement of the cervids.

(2) Official identification device distribution records. Any veterinarian who distributes official identification [OIDS], shall maintain distribution lists and documents for at least ~~ten (10) [five (5)]~~ years after issuance.

(3) Interstate movement records and documentation that is required by this administrative regulation shall be maintained for at least ~~ten (10) [five (5)]~~ years.

(4) Herd plans, inventory records, and disposition of cervid records shall be maintained for at least ~~ten (10) [five (5)]~~ years.

Section 19[16]. Penalties.

(1) Penalties for failure to comply with standards established in this administrative regulation.

(a) OSV shall have the authority to revoke or suspend a herd's permit for the Herd Certification Program or the Herd Monitoring Program if a person:

1. Falsifies information on an enrollment application, falsifies subsequent information required for continued enrollment, or refuses to produce documents requested by a representative of OSV;

2. Fails to comply with requirements in this administrative regulation on cervid identification, cervid inventory, herd records, testing, or cervid movement;

3. Or facility fails to remain in compliance with KRS Chapters 257 or 150, or any administrative regulation promulgated under the authority thereof;

4. Fails to comply with an instruction from a representative of OSV; or

5. Fails to produce any document required to be created or maintained by this administrative regulation.

(b) In accordance with KRS 257.990, a permit holder shall be subject to a monetary fine for violation of this administrative regulation.

(2) Penalties for failure to comply with Section ~~8, 9, 10, or 11[6, 7, 8, or 9]~~ of this administrative regulation.

(a) In accordance with KRS 150.740(6), a person shall be guilty of a Class D felony upon conviction; and

(b) Upon conviction of a second violation, a person shall be permanently ineligible for renewal of a captive cervid permit.

(3) In accordance with KRS 150.740(7), the Kentucky Department of Fish and Wildlife Resources shall have authority to seize captive cervids that were imported into the Commonwealth in violation of this administrative regulation or KRS 150.740 and 257.550.

(4) Any person whose permit is revoked shall not reapply to the HCP or HMP programs for a period of five (5) years.

(5) Herds enrolled in HMP or HCP programs whose permit holders fail to reapply for permits on or before the application deadline shall be immediately placed in quarantine. These herds shall be subject to a physical herd inventory prior to permit issuance. A hunting or harvest shall not take place during the quarantine period. Herds shall not be re-enrolled in any program without first paying the initial fee of \$150 and the renewal fee as required in either the HCP or HMP program.

(6) Removal of official identification [OID], from a cervid without written permission of the OSV shall result in the loss of status for all cervids inside the herd.

Section ~~20[47]~~. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application", ~~October 2020[February 2019]~~;

(b) "Deceased Animal Report", May 2019;

(c) "Herd/Flock Additions", ~~October 2020[May 2019]~~;

(d) "Herd/Flock Deletions", ~~October 2020[, May 2019]~~;

(e) "Retag Form", February 2017;

(f) "USDA Chronic Wasting Disease Program Standards", May 2019;

(g) "APHIS 91-45-16, Brucellosis in Cervidae", September 2003; and

(h) "APHIS 91-45-011, Bovine Tuberculosis Eradication", January 1999.

(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) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, March 8, 2021)**

401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 60, 42 U.S.C. 7411

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-120, 42 U.S.C. 7411

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. 42 U.S.C. 7411(c)(1) authorizes each state to

establish standards for the federal NSPS program for the U.S. EPA delegation of implementation and enforcement authority to the Commonwealth of Kentucky. This administrative regulation establishes the standards of performance for new stationary sources by referencing the Standards of Performance for New Stationary Sources (NSPS) codified in 40 C.F.R. Part 60. ~~[Delegation of implementation and enforcement authority for the federal NSPS program from the U.S. Environmental Protection Agency to the Commonwealth of Kentucky is provided by 42 U.S.C. 7411(c)(1).]~~

Section 1. Definitions. (1) Except as established[provided] in subsection (2) of this section, terms used in this administrative regulation shall have the meaning given to them in 40 C.F.R. Part 60.

(2) "Administrator" means the Secretary of the Energy and Environment Cabinet unless a specific provision of 40 C.F.R. Part 60 states that the U.S. Environmental Protection Agency retains authority.

Section 2. Applicability. This administrative regulation shall apply to sources subject to 40 C.F.R. Part 60. A source subject to this administrative regulation shall comply with:

(1) 40 C.F.R. 60.1 ~~through[te]~~ 60.19, Table 1 (Subpart A), General Provisions, as published July 1, ~~2020~~ and at 85 F.R. ~~57739 and 85 F.R. 63394[2016]~~;

(2)(a) 40 C.F.R. 60.40 ~~through[te]~~ 60.46 (Subpart D), Standards of Performance for Fossil-Fuel-Fired Steam Generators, as published July 1, ~~2020[2016]~~;

(b) 40 C.F.R. 60.40Da ~~through[te]~~ 60.52Da (Subpart Da), Standards of Performance for Electric Utility Steam Generating Units, as published July 1, ~~2020[2016]~~;

(c) 40 C.F.R. 60.40b ~~through[te]~~ 60.49b (Subpart Db), Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units, as published July 1, ~~2020[2016]~~;

(d) 40 C.F.R. 60.40c ~~through[te]~~ 60.48c (Subpart Dc), Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units, as published July 1, ~~2020[2016]~~;

(e) 40 C.F.R. 60.50 ~~through[te]~~ 60.54 (Subpart E), Standards of Performance for Incinerators, as published July 1, ~~2020[2016]~~;

(f) 40 C.F.R. 60.50a ~~through[te]~~ 60.59a (Subpart Ea), Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and On or Before September 20, 1994, as published July 1, ~~2020[2016]~~;

(g) 40 C.F.R. 60.50b ~~through[te]~~ 60.59b (Subpart Eb), Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996, as published July 1, ~~2020[2016]~~;

(h) 40 C.F.R. 60.50c ~~through[te]~~ 60.58c, ~~Tables 1A through 3[Tables 1 to 3]~~ (Subpart Ec), Standards of Performance for New Stationary Sources: Hospital/Medical/Infectious Waste Incinerators, as published July 1, ~~2020[2016]~~;

(i) 40 C.F.R. 60.60 ~~through[te]~~ 60.66 (Subpart F), Standards of Performance for Portland Cement Plants, as published July 1, ~~2020[2016]~~;

(j) 40 C.F.R. 60.70 ~~through[te]~~ 60.74 (Subpart G), Standards of Performance for Nitric Acid Plants, as published July 1, ~~2020[2016]~~;

(k) 40 C.F.R. 60.70a ~~through[te]~~ 60.77a (Subpart Ga), Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011, as published July 1, ~~2020[2016]~~;

(l) 40 C.F.R. 60.80 ~~through[te]~~ 60.85 (Subpart H), Standards of Performance for Sulfuric Acid Plants, as published July 1, ~~2020[2016]~~;

(m) 40 C.F.R. 60.90 ~~through[te]~~ 60.93 (Subpart I), Standards of Performance for Hot Mix Asphalt Facilities, as published July 1, ~~2020[2016]~~;

(n) 40 C.F.R. 60.100 ~~through[te]~~ 60.109 (Subpart J), Standards of Performance for Petroleum Refineries, as published July 1,

2020[2046];

(o) 40 C.F.R. 60.100a through[tē] 60.109a, Table 1 (Subpart Ja), Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007, as published July 1, 2020[2046];

(p) 40 C.F.R. 60.110 through[tē] 60.113 (Subpart K), Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978, as published July 1, 2020[2046];

(q) 40 C.F.R. 60.110a through[tē] 60.115a (Subpart Ka), Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984, as published July 1, 2020[2046];

(r) 40 C.F.R. 60.110b through[tē] 60.117b (Subpart Kb), Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984, as published July 1, 2020[2046];

(s) 40 C.F.R. 60.120 through[tē] 60.123 (Subpart L), Standards of Performance for Secondary Lead Smelters, as published July 1, 2020[2046];

(t) 40 C.F.R. 60.130 through[tē] 60.133 (Subpart M), Standards of Performance for Secondary Brass and Bronze Production Plants, as published July 1, 2020[2046];

(u) 40 C.F.R. 60.140 through[tē] 60.144 (Subpart N), Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973, as published July 1, 2020[2046];

(v) 40 C.F.R. 60.140a through[tē] 60.145a (Subpart Na), Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983, as published July 1, 2020[2046];

(w) 40 C.F.R. 60.150 through[tē] 60.156 (Subpart O), Standards of Performance for Sewage Treatment Plants, as published July 1, 2020[2046];

(x) 40 C.F.R. 60.160 through[tē] 60.166 (Subpart P), Standards of Performance for Primary Copper Smelters, as published July 1, 2020[2046];

(y) 40 C.F.R. 60.170 through[tē] 60.176 (Subpart Q), Standards of Performance for Primary Zinc Smelters, as published July 1, 2020[2046];

(z) 40 C.F.R. 60.180 through[tē] 60.186 (Subpart R), Standards of Performance for Primary Lead Smelters, as published July 1, 2020[2046];

(aa) 40 C.F.R. 60.190 through[tē] 60.195 (Subpart S), Standards of Performance for Primary Aluminum Reduction Plants, as published July 1, 2020[2046];

(bb) 40 C.F.R. 60.200 through[tē] 60.205 (Subpart T), Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants, as published July 1, 2020[2046];

(cc) 40 C.F.R. 60.210 through[tē] 60.215 (Subpart U), Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants, as published July 1, 2020[2046];

(dd) 40 C.F.R. 60.220 through[tē] 60.225 (Subpart V), Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants, as published July 1, 2020[2046];

(ee) 40 C.F.R. 60.230 through[tē] 60.235 (Subpart W), Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants, as published July 1, 2020[2046];

(ff) 40 C.F.R. 60.240 through[tē] 60.245 (Subpart X), Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities, as published July 1, 2020[2046];

(gg) 40 C.F.R. 60.250 through[tē] 60.258 (Subpart Y), Standards of Performance for Coal Preparation and Processing Plants, as published July 1, 2020[2046];

(hh) 40 C.F.R. 60.260 through[tē] 60.266 (Subpart Z), Standards of Performance for Ferroalloy Production Facilities, as published July 1, 2020[2046];

(ii) 40 C.F.R. 60.270 through[tē] 60.276 (Subpart AA), Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983, as published July 1, 2020[2046];

(jj) 40 C.F.R. 60.270a through[tē] 60.276a (Subpart AAa), Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983, as published July 1, 2020[2046];

(kk) 40 C.F.R. 60.280 through[tē] 60.285 (Subpart BB), Standards of Performance for Kraft Pulp Mills, as published July 1, 2020[2046];

(ll) 40 C.F.R. 60.280a through[tē] 60.288a (Subpart BBa), Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013, as published July 1, 2020[2046];

(mm) 40 C.F.R. 60.290 through[tē] 60.296 (Subpart CC), Standards of Performance for Glass Manufacturing Plants, as published July 1, 2020[2046];

(nn) 40 C.F.R. 60.300 through[tē] 60.304 (Subpart DD), Standards of Performance for Grain Elevators, as published July 1, 2020[2046];

(oo) 40 C.F.R. 60.310 through[tē] 60.316 (Subpart EE), Standards of Performance for Surface Coating of Metal Furniture, as published July 1, 2020[2046];

(pp) 40 C.F.R. 60.330 through[tē] 60.335 (Subpart GG), Standards of Performance for Stationary Gas Turbines, as published July 1, 2020[2046];

(qq) 40 C.F.R. 60.340 through[tē] 60.344 (Subpart HH), Standards of Performance for Lime Manufacturing Plants, as published July 1, 2020[2046];

(rr) 40 C.F.R. 60.370 through[tē] 60.374 (Subpart KK), Standards of Performance for Lead-Acid Battery Manufacturing Plants, as published July 1, 2020[2046];

(ss) 40 C.F.R. 60.380 through[tē] 60.386 (Subpart LL), Standards of Performance for Metallic Mineral Processing Plants, as published July 1, 2020[2046];

(tt) 40 C.F.R. 60.390 through[tē] 60.398 (Subpart MM), Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations, as published July 1, 2020[2046];

(uu) 40 C.F.R. 60.400 through[tē] 60.404 (Subpart NN), Standards of Performance for Phosphate Rock Plants, as published July 1, 2020[2046];

(vv) 40 C.F.R. 60.420 through[tē] 60.424 (Subpart PP), Standards of Performance for Ammonium Sulfate Manufacture, as published July 1, 2020[2046];

(ww) 40 C.F.R. 60.430 through[tē] 60.435 (Subpart QQ), Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing, as published July 1, 2020[2046];

(xx) 40 C.F.R. 60.440 through[tē] 60.447 (Subpart RR), Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations, as published July 1, 2020[2046];

(yy) 40 C.F.R. 60.450 through[tē] 60.456 (Subpart SS), Standards of Performance for Industrial Surface Coating: Large Appliances, as published July 1, 2020[2046];

(zz) 40 C.F.R. 60.460 through[tē] 60.466 (Subpart TT), Standards of Performance for Metal Coil Surface Coating, as published July 1, 2020[2046];

(aaa) 40 C.F.R. 60.470 through[tē] 60.474 (Subpart UU), Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture, as published July 1, 2020[2046];

(bbb) 40 C.F.R. 60.480 through[tē] 60.489 (Subpart VV), Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006, as published July 1, 2020[2046];

(ccc) 40 C.F.R. 60.480a through[tē] 60.489a (Subpart VVa), Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006, as published July 1, 2020[2046];

(ddd) 40 C.F.R. 60.490 through[tē] 60.496 (Subpart WW), Standards of Performance for the Beverage Can Surface Coating

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Industry, as published July 1, [2020\[2016\]](#);

(eee) 40 C.F.R. 60.500 [through\[te\]](#) 60.506 (Subpart XX), Standards of Performance for Bulk Gasoline Terminals, as published July 1, [2020\[2016\]](#);

(fff) 40 C.F.R. 60.540 [through\[te\]](#) 60.548 (Subpart BBB), Standards of Performance for the Rubber Tire Manufacturing Industry, as published July 1, [2020\[2016\]](#);

(ggg) 40 C.F.R. 60.560 [through\[te\]](#) 60.566 (Subpart DDD), Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry, as published July 1, [2020\[2016\]](#);

(hhh) 40 C.F.R. 60.580 [through\[te\]](#) 60.585 (Subpart FFF), Standards of Performance for Flexible Vinyl and Urethane Coating and Printing, as published July 1, [2020\[2016\]](#);

(iii) 40 C.F.R. 60.590 [through\[te\]](#) 60.593 (Subpart GGG), Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and On or Before November 7, 2006, as published July 1, [2020\[2016\]](#);

(jjj) 40 C.F.R. 60.590a [through\[te\]](#) 60.593a (Subpart GGGa), Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006, as published July 1, [2020\[2016\]](#);

(kkk) 40 C.F.R. 60.600 [through\[te\]](#) 60.604 (Subpart HHH), Standards of Performance for Synthetic Fiber Production Facilities, as published July 1, [2020\[2016\]](#);

(lll) 40 C.F.R. 60.610 [through\[te\]](#) 60.618 (Subpart III), Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes, as published July 1, [2020\[2016\]](#);

(mmm) 40 C.F.R. 60.620 [through\[te\]](#) 60.625 (Subpart JJJ), Standards of Performance for Petroleum Dry Cleaners, as published July 1, [2020\[2016\]](#);

(nnn) 40 C.F.R. 60.630 [through\[te\]](#) 60.636 (Subpart KKK), Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and On or Before August 23, 2011, as published July 1, [2020\[2016\]](#);

(ooo) 40 C.F.R. 60.640 [through\[te\]](#) 60.648 (Subpart LLL), Standards of Performance for SO₂ Emissions from Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and On or Before August 23, 2011, as published July 1, [2020\[2016\]](#);

(ppp) 40 C.F.R. 60.660 [through\[te\]](#) 60.668 (Subpart NNN), Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations, as published July 1, [2020\[2016\]](#);

(qqq) 40 C.F.R. 60.670 [through\[te\]](#) 60.676, Tables 1 [through\[te\]](#) 3 (Subpart OOO), Standards of Performance for Nonmetallic Mineral Processing Plants, as published July 1, [2020\[2016\]](#);

(rrr) 40 C.F.R. 60.680 [through\[te\]](#) 60.685 (Subpart PPP), Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants, as published July 1, [2020\[2016\]](#);

(sss) 40 C.F.R. 60.690 [through\[te\]](#) 60.699 (Subpart QQQ), Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems, as published July 1, [2020\[2016\]](#);

(ttt) 40 C.F.R. 60.700 [through\[te\]](#) 60.708 (Subpart RRR), Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes, as published July 1, [2020\[2016\]](#);

(uuu) 40 C.F.R. 60.710 [through\[te\]](#) 60.718 (Subpart SSS), Standards of Performance for Magnetic Tape Coating Facilities, as published July 1, [2020\[2016\]](#);

(vvv) 40 C.F.R. 60.720 [through\[te\]](#) 60.726 (Subpart TTT), Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines, as published July 1, [2020\[2016\]](#);

(www) 40 C.F.R. 60.730 [through\[te\]](#) 60.737 (Subpart UUU), Standards of Performance for Calciners and Dryers in Mineral Industries, as published July 1, [2020\[2016\]](#);

(xxx) 40 C.F.R. 60.740 [through\[te\]](#) 60.748 (Subpart VVV), Standards of Performance for Polymeric Coating of Supporting Substrates Facilities, as published July 1, [2020\[2016\]](#);

(yyy) 40 C.F.R. 60.750 [through\[te\]](#) 60.759 (Subpart WWW), Standards of Performance for Municipal Solid Waste Landfills, as published July 1, [2020](#) and at [85 F.R. 64398\[2016\]](#);

(zzz) 40 C.F.R. 60.760 [through\[te\]](#) 60.769 (Subpart XXX), Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014, as published [July 1, 2020](#) and at [85 F.R. 63394\[at 84 F.R. 59368\]](#);

(aaaa) 40 C.F.R. 60.1000 [through\[te\]](#) 60.1465, Tables 1 [through\[te\]](#) 5 (Subpart AAAA), Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001, as published July 1, [2020\[2016\]](#);

(bbbb) 40 C.F.R. 60.2000 [through\[te\]](#) 60.2265, Tables 1 [through\[te\]](#) 8 (Subpart CCCC), Standards of Performance for Commercial and Industrial Solid Waste Incineration Units, as published July 1, [2020](#) and at [85 F.R. 63394\[2016\]](#);

(cccc) 40 C.F.R. 60.2880 [through\[te\]](#) 60.2977, Tables 1 [through\[te\]](#) 4 (Subpart EEEE), Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006, as published July 1, [2020\[2016\]](#);

(dddd) 40 C.F.R. 60.4200 [through\[te\]](#) 60.4219, Tables 1 [through\[te\]](#) 8 (Subpart IIII), Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, as published July 1, [2020\[2016\]](#);

(eeee) 40 C.F.R. 60.4230 [through\[te\]](#) 60.4248, Tables 1 [through\[te\]](#) 4 (Subpart JJJJ), Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, as published July 1, [2020](#) and at [85 F.R. 63394\[2016\]](#);

(ffff) 40 C.F.R. 60.4300 [through\[te\]](#) 60.4420, Table 1 (Subpart KKKK), Standards of Performance for Stationary Combustion Turbines, as published July 1, [2020](#) and at [85 F.R. 63394\[2016\]](#);

(gggg) 40 C.F.R. 60.4760 [through\[te\]](#) 60.4930, Tables 1 [through\[te\]](#) 5 (Subpart LLLL), Standards of Performance for New Sewage Sludge Incineration Units, as published July 1, [2020\[2016\]](#);

(hhhh) 40 C.F.R. 60.5360 [through\[te\]](#) 60.5430, Tables 1 [through\[te\]](#) 3 (Subpart OOOO), Standards of Performance for Crude Oil and Natural Gas ~~Facilities~~ [Production, Transmission and Distribution] for Which Construction, Modification or Reconstruction Commenced after August 23, 2011, and On or Before September 18, 2015, as published July 1, [2020](#) and at [85 F.R. 57018\[2016\]](#);

(iiii) 40 C.F.R. 60.5360a [through\[te\]](#) 60.5432a, Tables 1 [through\[te\]](#) 3 (Subpart OOOOa), Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After September 18, 2015, as published July 1, [2020](#) and at [85 F.R. 57018](#) and [85 F.R. 57398\[2016\]](#); or

(jjjj) 40 C.F.R. 60.5508 [through\[te\]](#) 60.5580, Tables 1 [through\[te\]](#) 3 (Subpart TTTT), Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units, as published July 1, [2020\[2016\]](#); and

(3) The applicable methods, procedures, and reporting requirements codified in 40 C.F.R. Part 60, Appendices [A-1 through\[A-te\]](#) F and I, as published July 1, [2020](#) and at [85 F.R. 63394\[2016\]](#).

Section 3. Reporting Requirements. All documentation required by this administrative regulation to be submitted to the U.S. EPA shall also be submitted to the cabinet.

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, March 8, 2021)

401 KAR 63:002. 40 C.F.R. Part 63 national emission standards for hazardous air pollutants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 63, 42 U.S.C. 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-120, 42 U.S.C. 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. **42 U.S.C. 7412(l) authorizes each state to establish standards for the federal NESHAP program for the U.S. EPA delegation of implementation and enforcement authority to the Commonwealth of Kentucky.** This administrative regulation establishes national emission standards for hazardous air pollutants by referencing the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 C.F.R. 63.1 through 63.56, 63.70 through 63.81, and 63.100 through 63.12005. ~~**[Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency (U.S. EPA) to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(l).]**~~

Section 1. Definitions. (1) Except as **established[provided]** in subsection (2) of this section, terms used in this administrative regulation shall have the meaning given to them in 40 C.F.R. Part 63.

(2) "Administrator" means the Secretary of the Energy and Environment Cabinet unless a specific provision of 40 C.F.R. Part 63 states that the United States Environmental Protection Agency retains authority.

Section 2. Applicability. This administrative regulation shall apply to sources subject to 40 C.F.R. Part 63. A source subject to this administrative regulation shall comply with:

(1) 40 C.F.R. 63.1 through[te] 63.16, Table 1 (Subpart A), General Provisions, as published July 1, 2020 and at 85 F.R. 39980, 85 F.R. 40386, 85 F.R. 40594, 85 F.R. 40740, 85 F.R. 41100, 85 F.R. 41276, 85 F.R. 41411, 85 F.R. 41680, 85 F.R. 42074, 85 F.R. 44216, 85 F.R. 44960, 85 F.R. 45476, 85 F.R. 49084, 85 F.R. 49434, 85 F.R. 49724, and 85 F.R. 63394[2046];

(2) 40 C.F.R. 63.40 through[te] 63.56, Tables 1 through[te] 2 (Subpart B), Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j), as applicable, as published July 1, 2020[2046];

(3) 40 C.F.R. 63.70 through[te] 63.81 (Subpart D), Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants, as applicable, as published July 1, 2020[2046];

(4)(a) 40 C.F.R. 63.100 through[te] 63.107, Tables 1 through[te] 4 (Subpart F), National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry, as published July 1, 2020[2046];

(b) 40 C.F.R. 63.110 through[te] 63.153, Tables 1 through[te] 37, and Figure 1 (Subpart G), National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater, as published July 1, 2020[2046];

(c) 40 C.F.R. 63.160 through[te] 63.183, Tables 1 through[te] 4 (Subpart H), National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks, as published July 1, 2020[2046];

(d) 40 C.F.R. 63.190 through[te] 63.193 (Subpart I), National

Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks, as published July 1, 2020[2046];

(e) 40 C.F.R. 63.210 through[te] 63.217 (Subpart J), National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production, as published July 1, 2020[2046];

(f) 40 C.F.R. 63.300 through[te] 63.313, Appendix A (Subpart L), National Emission Standards for Coke Oven Batteries, as published July 1, 2020[2046];

(g) 40 C.F.R. 63.320 through[te] 63.326 (Subpart M), National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as published July 1, 2020[2046];

(h) 40 C.F.R. 63.340 through[te] 63.348, Table 1 (Subpart N), National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as published July 1, 2020[2046];

(i) 40 C.F.R. 63.360 through[te] 63.368 (Subpart O), Ethylene Oxide Emissions Standards for Sterilization Facilities, as published July 1, 2020[2046];

(j) 40 C.F.R. 63.400 through[te] 63.407, Table 1 (Subpart Q), National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers, as published July 1, 2020[2046];

(k) 40 C.F.R. 63.420 through[te] 63.429, Table 1 (Subpart R), National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations), as published July 1, 2020[2046];

(l) 40 C.F.R. 63.440 through[te] 63.459, Table 1 (Subpart S), National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry, as published July 1, 2020[2046];

(m) 40 C.F.R. 63.460 through[te] 63.471, Appendices A through[te] B (Subpart T), National Emission Standards for Halogenated Solvent Cleaning, as published July 1, 2020[2046];

(n) 40 C.F.R. 63.480 through[te] 63.507, Tables 1 through[te] 9 (Subpart U), National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins, as published July 1, 2020[2046];

(o) 40 C.F.R. 63.520 through[te] 63.529, Table 1 (Subpart W), National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production, as published July 1, 2020[2046];

(p) 40 C.F.R. 63.541 through[te] 63.552, Tables 1 through[te] 3 (Subpart X), National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting, as published July 1, 2020[2046];

(q) 40 C.F.R. 63.560 through[te] 63.568 (Subpart Y), National Emission Standards for Marine Tank Vessel Loading Operations, as published July 1, 2020[2046];

(r) 40 C.F.R. 63.600 through[te] 63.611, Tables 1 through[te] 5[te] 4], and Appendix A (Subpart AA), National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants, as published July 1, 2020[2046];

(s) 40 C.F.R. 63.620 through[te] 63.632, Tables 1 through[te] 5, and Appendix A (Subpart BB), National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants, as published July 1, 2020[2046];

(t) 40 C.F.R. 63.640 through[te] 63.671, Appendix (Subpart CC), National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries, as published July 1, 2020[2046];

(u) 40 C.F.R. 63.680 through[te] 63.698, Tables 1 through[te] 5 (Subpart DD), National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations, as published July 1, 2020[2046];

(v) 40 C.F.R. 63.701 through[te] 63.708, Table 1 (Subpart EE), National Emission Standards for Magnetic Tape Manufacturing Operations, as published July 1, 2020[2046];

(w) 40 C.F.R. 63.741 through[te] 63.759, Table 1, and Appendix A (Subpart GG), National Emission Standards for Aerospace Manufacturing and Rework Facilities, as published July 1, 2020[2046];

(x) 40 C.F.R. 63.760 through[te] 63.777, Appendix (Subpart HH), National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities, as published July 1, 2020[2046];

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(y) 40 C.F.R. 63.780 through 63.789, Tables 1 through 3, and Appendices A through B (Subpart II), National Emission Standards for Shipbuilding and Ship Repair (Surface Coating), as published July 1, 2020[2046];

(z) 40 C.F.R. 63.800 through 63.808, Tables 1 through 6 (Subpart JJ), National Emission Standards for Wood Furniture Manufacturing Operations, as published July 1, 2020[2046];

(aa) 40 C.F.R. 63.820 through 63.831, Table 1, and Appendix A (Subpart KK), National Emission Standards for the Printing and Publishing Industry, as published July 1, 2020[2046];

(bb) 40 C.F.R. 63.840 through 63.855, Tables 1 through 4, and Appendix A (Subpart LL), National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants, as published July 1, 2020[2046];

(cc) 40 C.F.R. 63.860 through 63.868, Table 1 (Subpart MM), National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills, as published July 1, 2020[2046];

(dd) 40 C.F.R. 63.880 through 63.888, Table 1 (Subpart NN), National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources, as published July 1, 2020[at 80 Fed. Reg. 45325, July 29, 2016];

(ee) 40 C.F.R. 63.900 through 63.908 (Subpart OO), National Emission Standards for Tanks - Level 1, as published July 1, 2020[2046];

(ff) 40 C.F.R. 63.920 through 63.929 (Subpart PP), National Emission Standards for Containers, as published July 1, 2020[2046];

(gg) 40 C.F.R. 63.940 through 63.949 (Subpart QQ), National Emission Standards for Surface Impoundments, as published July 1, 2020[2046];

(hh) 40 C.F.R. 63.960 through 63.967 (Subpart RR), National Emission Standards for Individual Drain Systems, as published July 1, 2020[2046];

(ii) 40 C.F.R. 63.980 through 63.999 (Subpart SS), National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process, as published at July 1, 2020 and at 85 F.R. 40386[2046];

(jj) 40 C.F.R. 63.1000 through 63.1018 (Subpart TT), National Emission Standards for Equipment Leaks - Control Level 1, as published July 1, 2020[2046];

(kk) 40 C.F.R. 63.1019 through 63.1039, Table 1 (Subpart UU), National Emission Standards for Equipment Leaks - Control Level 2 Standards, as published July 1, 2020[2046];

(ll) 40 C.F.R. 63.1040 through 63.1050 (Subpart VV), National Emission Standards for Oil-Water Separators and Organic-Water Separators, as published July 1, 2020[2046];

(mm) 40 C.F.R. 63.1060 through 63.1067 (Subpart WW), National Emission Standards for Storage Vessels (Tanks) - Control Level 2, as published July 1, 2020[2046];

(nn) 40 C.F.R. 63.1080 through 63.1097, Tables 1 through 2 (Subpart XX), National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, as published July 1, 2020 and at 85 F.R. 40386[2046];

(oo) 40 C.F.R. 63.1100 through 63.1114 (Subpart YY), National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards, as published July 1, 2020 and at 85 F.R. 40386[2046];

(pp) 40 C.F.R. 63.1155 through 63.1166, Table 1 (Subpart CCC), National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants, as published July 1, 2020[2046];

(qq) 40 C.F.R. 63.1175 through 63.1197, Tables 1 through 2, and Appendix A (Subpart DDD), National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production, as published July 1, 2020[2046];

(rr) 40 C.F.R. 63.1200 through 63.1221, Table 1, and Appendix (Subpart EEE), National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, as published July 1, 2020[2046];

(ss) 40 C.F.R. 63.1250 through 63.1261, Tables 1 through 9 (Subpart GGG), National Emission Standards for Pharmaceuticals Production, as published July 1, 2020[2046];

(tt) 40 C.F.R. 63.1270 through 63.1287, Tables 1 through 2 (Subpart HHH), National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities, as published July 1, 2020[2046];

(uu) 40 C.F.R. 63.1290 through 63.1309, Appendix, and Tables 1 through 3 (Subpart III), National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production, as published July 1, 2020[2046];

(vv) 40 C.F.R. 63.1310 through 63.1336, Tables 1 through 9 (Subpart JJJ), National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins, as published July 1, 2020[2046];

(ww) 40 C.F.R. 63.1340 through 63.1358, Tables 1 through 2[Table—4] (Subpart LLL), National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry, as published July 1, 2020 and at 85 F.R. 63394[2046];

(xx) 40 C.F.R. 63.1360 through 63.1369, Tables 1 through 4 (Subpart MMM), National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production, as published July 1, 2020[2046];

(yy) 40 C.F.R. 63.1380 through 63.1389, Tables 1 through 2, and Appendices A through C (Subpart NNN), National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing, as published July 1, 2020[2046];

(zz) 40 C.F.R. 63.1400 through 63.1419, Tables 1 through 6 (Subpart OOO), National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins, as published July 1, 2020[2046];

(aaa) 40 C.F.R. 63.1420 through 63.1439, Tables 1 through 8 (Subpart PPP), National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production, as published July 1, 2020[2046];

(bbb) 40 C.F.R. 63.1440 through 63.1459, Table 1, and Figure 1 (Subpart QQQ), National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting, as published July 1, 2020[2046];

(ccc) 40 C.F.R. 63.1500 through 63.1519, Tables 1 through 3, and Appendix A (Subpart RRR), National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as published July 1, 2020[2046];

(ddd) 40 C.F.R. 63.1541 through 63.1551, Table 1 (Subpart TTT), National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting, as published July 1, 2020[2046];

(eee) 40 C.F.R. 63.1560 through 63.1579, Tables 1 through 44, and Appendix A (Subpart UUU), National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, as published July 1, 2020[2046];

(fff) 40 C.F.R. 63.1580 through 63.1595, Tables 1 through 2[Table—4] (Subpart VVV), National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as published July 1, 2020[2046];

(ggg) 40 C.F.R. 63.1620 through 63.1661, Table 1 (Subpart XXX), National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese, as published July 1, 2020[2046];

(hhh) 40 C.F.R. 63.1930 through 63.1990, Table 1 (Subpart AAAA), National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills, as published July 1, 2020 and at 85 F.R. 64398[2046];

(iii) 40 C.F.R. 63.2130 through 63.2192, Tables 1 through 8[te—6] (Subpart CCCC), National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast, as published July 1, 2020[2046];

(jii) 40 C.F.R. 63.2230 through 63.2292, Tables 1A through 10, and Appendix A (Subpart DDDD), National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products, as published July 1, 2020 and at 85 F.R. 49434 and 85 F.R. 51668[2046];

(kkk) 40 C.F.R. 63.2330 through 63.2406, Tables 1

through 12 (Subpart EEEE), National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline), as published July 1, 2020 and at 85 F.R. 40740[2046];

(iii) 40 C.F.R. 63.2430 through 63.2550, Tables 1 through 12 (Subpart FFFF), National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing, as published July 1, 2020 and at 85 F.R. 42074 and 85 F.R. 49084[2046];

(mmm) 40 C.F.R. 63.2830 through 63.2872 (Subpart GGGG), National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production, as published July 1, 2020[2046];

(nnn) 40 C.F.R. 63.2980 through 63.3004, Tables 1 through 2, and Appendices A through B (Subpart HHHH), National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production, as published July 1, 2020[2046];

(ooo) 40 C.F.R. 63.3080 through 63.3176, Tables 1 through 5[~~to~~–4], and Appendix A (Subpart IIII), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks, as published July 1, 2020 and at 85 F.R. 41100[2046];

(ppp) 40 C.F.R. 63.3280 through 63.3420, Tables 1 through 2 (Subpart JJJJ), National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating, as published July 1, 2020 and at 85 F.R. 41276[2046];

(qqq) 40 C.F.R. 63.3480 through 63.3561, Tables 1 through 8[~~to~~–7] (Subpart KKKK), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans, as published July 1, 2020[2046];

(rrr) 40 C.F.R. 63.3880 through 63.3981, Tables 1 through 5[~~to~~–4], and Appendix A (Subpart MMMM), National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products, as published July 1, 2020 and at 85 F.R. 41100[2046];

(sss) 40 C.F.R. 63.4080 through 63.4181, Tables 1 through 5[~~to~~–4] (Subpart NNNN), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances, as published July 1, 2020 and at 85 F.R. 41100[2046];

(ttt) 40 C.F.R. 63.4280 through 63.4371, Tables 1 through 6[~~to~~–5] (Subpart OOOO), National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles, as published July 1, 2020 and at 85 F.R. 41100[2046];

(uuu) 40 C.F.R. 63.4480 through 63.4581, Tables 1 through 5[~~to~~–4], and Appendix A (Subpart PPPP), National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products, as published July 1, 2020 and at 85 F.R. 41100[2046];

(vvv) 40 C.F.R. 63.4680 through 63.4781, Tables 1 through 6 (Subpart QQQQ), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products, as published July 1, 2020[2046];

(www) 40 C.F.R. 63.4880 through 63.4981, Tables 1 through 5[~~to~~–4] (Subpart RRRR), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture, as published July 1, 2020 and at 85 F.R. 41100[2046];

(xxx) 40 C.F.R. 63.5080 through 63.5200, Tables 1 through 3[~~to~~–2] (Subpart SSSS), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil, as published July 1, 2020[2046];

(yyy) 40 C.F.R. 63.5280 through 63.5460, Figure 1, and Tables 1 through 2 (Subpart TTTT), National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations, as published July 1, 2020[2046];

(zzz) 40 C.F.R. 63.5480 through 63.5610, Tables 1 through 10 (Subpart UUUU), National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing, as published July 1, 2020 and at 85 F.R. 39980[2046];

(aaaa) 40 C.F.R. 63.5680 through 63.5779, Tables 1 through 8 (Subpart VVVV), National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing, as published July 1, 2020[2046];

(bbbb) 40 C.F.R. 63.5780 through 63.5935, Tables 1 through 15, and Appendix A (Subpart WWWW), National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production, as published July 1, 2020[2046];

(cccc) 40 C.F.R. 63.5980 through 63.6015, Tables 1 through 17 (Subpart XXXX), National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing, as published July 1, 2020 and at 85 F.R. 44752[2046];

(dddd) 40 C.F.R. 63.6080 through 63.6175, Tables 1 through 7 (Subpart YYYYY), National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines, as published July 1, 2020[2046];

(eeee) 40 C.F.R. 63.6580 through 63.6675, Tables 1a through 8, and Appendix A (Subpart ZZZZ), National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, as published July 1, 2020[2046];

(ffff) 40 C.F.R. 63.7080 through 63.7143, Tables 1 through 9[~~to~~–8] (Subpart AAAAA), National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants, as published July 1, 2020 and at 85 F.R. 44960[2046];

(gggg) 40 C.F.R. 63.7180 through 63.7195, Tables 1 through 2 (Subpart BBBB), National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing, as published July 1, 2020[2046];

(hhhh) 40 C.F.R. 63.7280 through 63.7352, Table 1 (Subpart CCCCC), National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, as published July 1, 2020[2046];

(iiii) 40 C.F.R. 63.7480 through 63.7575, Tables 1 through 13 (Subpart DDDDD), National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, as published July 1, 2020[2046];

(jjjj) 40 C.F.R. 63.7680 through 63.7765, Table 1 (Subpart EEEEE), National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries, as published July 1, 2020 and at 85 F.R. 56080[2046];

(kkkk) 40 C.F.R. 63.7780 through 63.7852, Tables 1 through 4[~~Table 1 to~~–4] (Subpart FFFFF), National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities, as published July 1, 2020[2046];

(llll) 40 C.F.R. 63.7880 through 63.7957, Tables 1 through 3 (Subpart GGGGG), National Emission Standards for Hazardous Air Pollutants: Site Remediation, as published July 1, 2020 and at 85 F.R. 41680[2046];

(mmmm) 40 C.F.R. 63.7980 through 63.8105, Tables 1 through 11[~~to~~–10] (Subpart HHHHH), National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing, as published July 1, 2020 and at 85 F.R. 49724[2046];

(nnnn) 40 C.F.R. 63.8180 through 63.8266, Tables 1 through 10 (Subpart IIIII), National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants, as published July 1, 2020[2046];

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(llll) 40 C.F.R. 63.11400 [through\[te\]](#) 63.11406 (Subpart MMMMM), National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources, as published July 1, [2020\[2046\]](#);

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(aaaaa) 40 C.F.R. 63.11599 [through\[te\]](#) 63.11607, Table 1 (Subpart CCCCCC), National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing, as published July 1, [2020\[2046\]](#);

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(5) The applicable test methods, procedures, and other provisions codified in 40 C.F.R. Part 63, Appendices A through E, as published July 1, 2020 and at 85 F.R. 63394[2016].

Section 3. Reporting Requirements. All documentation required by this administrative regulation to be submitted to the U.S. EPA shall also be submitted to the cabinet[A source shall submit all documentation required by this administrative regulation to both the cabinet and U.S. EPA].

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**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended at ARRS, March 8, 2021)**

601 KAR 1:113. Transportation network company.

RELATES TO: KRS 17.500, 61.878(1)(c)1., 61.931(6), 186.050, 189.290, 189A.010, 281.010, 281.600, 281.630, 281.6301, 281.631, 281.640, 281.650, 281.655, 281.656, 281.990, 304.3-070, 304.10-010-304.10-070, 304.20-020, 304.39-020(2), 304.39-040, 304.39-320, Chapter 365, 532.060

STATUTORY AUTHORITY: KRS 281.600, 281.630, 281.655

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 authorizes the Department of Vehicle Regulation to promulgate administrative regulations to regulate and establish requirements for the safe operation of motor carriers. KRS 281.630 authorizes the department to establish requirements for a transportation network company to apply for authority to operate in Kentucky. KRS 281.655 requires the department to establish standards for pre-trip acceptance policies and prearranged ride liability policies for transportation network companies. This administrative regulation establishes the standards and application requirements for a transportation network company to operate in Kentucky.

Section 1. Definitions. (1) "Basic reparation benefits" is defined by KRS 304.39-020(2).

(2) "Certificate" is defined by KRS 281.010(8).

(3) "Driver" is defined by KRS 281.010(20).

(4) "Mobile application" is defined by KRS 281.010(30).

(5) "Motor carrier" is defined by KRS 281.010(31).

(6) "Motor carrier vehicle" is defined by KRS 281.010(32).

(7) "Operating authority" means the authority granted to operate as a TNC in the commonwealth through the application process with the department.

(8) "Passenger" is defined by KRS 281.010(36).

(9) "Personal information" is defined by KRS 61.931(6).

(10) "Prearranged ride" is defined by KRS 281.010(40)[(39)].

(11) "Pre-trip acceptance liability policy" is defined by KRS 281.010(41)[(40)].

(12) "Regular seat" is defined by KRS 281.010(45)[(44)].

(13) "Street hail" is defined by KRS 281.010(46)[(45)].

(14) "Transportation network company" or "TNC" is defined by KRS 281.010(52)[(51)].

(15) "Transportation network company driver" or "TNC driver" is defined by KRS 281.010(54)[(53)].

(16) "Transportation network company service" or "TNC service" is defined by KRS 281.010(55)[(54)].

(17) "Transportation network company vehicle" or "TNC vehicle" is defined by KRS 281.010(56)[(55)].

(18) "Underinsured vehicle coverage" is defined by KRS 304.39-320(1).

(19) "Uninsured vehicle coverage" is defined by KRS 304.20-020(2).

Section 2. Application and Renewal. (1) A TNC shall register as a business organization with the Kentucky Secretary of State.

(2) The department may waive the filing of the certificate of assumed name if a TNC:

(a) Demonstrates compliance with the relevant provisions of KRS Chapter 365;

(b) Certifies in writing to the department that Kentucky law either prohibits or does not require the filing; and

(c) States the reasons in writing why the filing is not required.

(3) **[In order]** To apply for a certificate to operate, a TNC shall submit directly to the Division of Motor Carriers:

(a) A completed Transportation Network Company Authority Application, TC 95-627;

(b) An application fee of \$250 pursuant to KRS 281.630(3)(b); and

(c) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to **subsections (3) and (8) of** KRS 281.631 ~~[(3)(a)1. and (8)].~~

(4) A TNC with fifty-one (51) or more vehicles may qualify vehicles to operate by providing to the department through an online data access point:

(a) A completed Transportation Network Company Authority Application, TC 95-627;

(b) An application fee of \$250 pursuant to KRS 281.630(3)(b); and

(c) A calendar year bulk qualification fee pursuant to the following schedule:

1. \$3,000 for fifty-one (51) to 100 vehicles;

2. \$4,500 for 101 to 150 vehicles;

3. \$6,000 for 151 to 200 vehicles;

4. \$7,500 for 201 to 250 vehicles;

5. \$9,000 for 251 to 300 vehicles;

6. \$10,500 for 301 to 350 vehicles;

7. \$12,000 for 351 to 400 vehicles;

8. \$15,000 for 401 to 500 vehicles; and

9. \$22,500 for 501 or more vehicles.

(5) A TNC shall annually submit the following to the Division of Motor Carriers to renew a certificate:

(a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605;

(b) A certificate renewal fee of \$250 pursuant to KRS 281.630(4)(d); and

(c) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to **subsections (3) and (8) of** KRS 281.631 ~~[(3)(a)1. and (8)].~~

(6) If a TNC elects to use the bulk vehicle registration payment option in the TNC's initial or renewal TNC application, the TNC shall not be required to submit additional vehicle qualification information and fees to the Division of Motor Carriers in connection with vehicles that are added during the duration of the period for which the bulk payment was made.

(7) A TNC shall pay a renewal bulk fee by December 15 of each calendar year.

(8) A TNC vehicle shall be added to the TNC's current list by submitting the following to the Division of Motor Carriers:

(a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605; and

(b) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to **subsections (3) and (8) of** KRS 281.631 ~~[(3)(a)1. and (8)].~~

(9) An application shall be submitted electronically, by mail, or by hand delivery.

(10) Operating authority obtained pursuant to this section shall not be transferable.

(11)(a) The TNC shall submit the following documents if submitting an application for certificate, annual renewal, or adding a driver during the year:

1. An affidavit from the corporate officer in charge of Kentucky

operations certifying that the national criminal background check of TNC drivers established in KRS 281.630 and 281.6301 shall be completed prior to allowing the TNC driver to accept rides through the TNC mobile application; and

2. One (1) copy of the current contractual agreement between the TNC and TNC drivers.

(b) A deficient application shall be returned to the applicant with no formal action taken by the department.

Section 3. Demonstration of Financial Responsibility and Insurance.

(1) A TNC shall maintain primary automobile insurance that:

(a) Recognizes that a driver is a TNC driver or using a vehicle to transport passengers for compensation; and

(b) Provides insurance coverage for a TNC driver who is:

1. Logged on to the TNCs mobile application; or
2. Engaged in a prearranged ride.

(2) The following pre-trip acceptance liability policy insurance coverage requirements shall apply if a TNC driver is logged on to the TNC's mobile application and available to receive transportation requests but not engaged in a prearranged ride:

(a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(12);

(b) Basic reparation benefits in accordance with KRS 304.39-020;

(c) Uninsured vehicle coverage in accordance with KRS 304.20-020; and

(d) Underinsured vehicle coverage in accordance with KRS 304.39-320.

(3) The pre-trip acceptance liability policy insurance coverage requirements of KRS 281.655(12) shall be satisfied by one (1) of the following:

(a) Automobile insurance maintained by the TNC;

(b) Automobile insurance maintained by the TNC driver; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(4) The following automobile insurance requirements shall apply while a TNC driver is engaged in a prearranged ride:

(a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(4);

(b) Basic reparation benefits in accordance with KRS 304.39-020;

(c) Uninsured vehicle coverage in accordance with KRS 304.20-020; and

(d) Underinsured vehicle coverage in accordance with KRS 304.39-320.

(5) The prearranged ride liability insurance coverage requirements of KRS 281.655(4) shall be satisfied by one (1) of the following:

(a) Automobile insurance maintained by the TNC;

(b) Automobile insurance maintained by the TNC driver; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(6) If the insurance maintained by a TNC driver has lapsed or does not provide the required coverage, the TNC shall provide the required insurance coverage beginning with the first dollar of a claim. The TNC shall have the duty to defend a claim for damages.

(7) Coverage under an automobile insurance policy maintained by the TNC shall not be dependent on a personal automobile insurer or policy first denying a claim.

(8) The insurance required by this section shall be placed with an insurer licensed pursuant to KRS 304.3-070, or with a surplus lines insurer eligible under KRS 304.10-010 through 304.10-070.

(9) A TNC driver shall carry proof of insurance coverage satisfying KRS Chapter 304, KRS 281.655, and this administrative regulation during his or her use of a vehicle in connection with a TNC's mobile application. ***If [in the event of] an accident occurs,*** and upon request, a TNC driver shall provide this insurance coverage information directly to interested parties, automobile insurers, and investigating police officers.

(10) A TNC driver shall disclose directly to interested parties, automobile insurers, the department, and investigating police officers, whether or not he or she was logged on to the TNC's mobile application or on a prearranged ride at the time of an accident.

Section 4. Insurance Exclusions. (1) A Kentucky automobile insurer may exclude the following coverage under a TNC driver's insurance policy for loss or injury that occurs while a TNC driver is logged on to a TNC's mobile application or while a TNC driver provides a prearranged ride:

(a) Liability coverage for bodily injury and property damage;

(b) Personal injury protection coverage as established in KRS Chapter 304;

(c) Uninsured and underinsured motorist coverage;

(d) Medical payments coverage;

(e) Comprehensive physical damage coverage; and

(f) Collision physical damage coverage.

(2) Nothing in this administrative regulation shall require a personal automobile insurer to provide coverage while a driver is:

(a) Logged on to the TNC mobile application;

(b) Engaged in a prearranged ride; or

(c) Using a vehicle to transport passengers for compensation.

(3) Nothing in this administrative regulation shall preclude an insurer from providing coverage for the TNC driver's vehicle.

(4) An automobile insurer whose policy excludes coverage for a TNC vehicle or TNC driver shall have no duty to defend or indemnify a claim for personal or property damages.

(5) An automobile insurer that defends or indemnifies a claim against a TNC driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same driver.

(6) In a claims coverage investigation, the TNC and an insurer potentially providing coverage shall cooperate to facilitate the exchange of relevant information with directly involved parties.

(7) Information relevant to a claims coverage situation shall include:

(a) The name of the insurer or potential insurer of the TNC driver;

(b) The precise times the TNC driver logged off and on the TNC mobile application in the twelve (12) hour period immediately before and after the incident; and

(c) A complete description of the insurance coverage including the exclusions and limits.

(8) The Transportation Cabinet shall issue an RFQ to device manufacturers ***[in order]*** to certify manufacturers eligible to provide ignition interlock services and commodities required for the implementation and maintenance of the state's ignition interlock program.

Section 5. Vehicles. (1) A vehicle used by a driver for TNC services shall be qualified by the department to operate by submitting a completed Transportation Network Company Authority Application, TC 95-627 and submitting the fees required in Section 2 of this administrative regulation.

(2) The TNC shall ensure that the vehicles used by TNC drivers to transport passengers shall be subject to an annual inspection by a mechanic.

(3) The annual inspection shall be completed on the vehicle inspection form provided in Transportation Network Company Authority Application, TC 95-627, or a vehicle inspection form provided by the TNC within thirty (30) days of the qualification of a vehicle for TNC services.

(4) A TNC shall collect and maintain information on the vehicles being used to provide service by TNC drivers including:

(a) The VIN and license plate number; and

(b) Records of official vehicle inspections by the automotive technician.

(5) Records of vehicle inspection and VIN and license plate numbers shall be kept by the TNC for a minimum of three (3) years from the date of inspection, and the TNC shall make the records available to the department or its representative on request. The information and records may be submitted as personal or proprietary information pursuant to KRS 61.878(1)(c)1 and 61.931(6).

(6) A vehicle used to provide TNC services shall be readily identifiable by the following:

(a) A company specific emblem or decal affixed to the front

windshield on the passenger side of the vehicle provided by the TNC; and

(b) An electronic copy of the current TNC certificate.

(7) A driver who is no longer providing TNC service shall destroy or return the decal or emblem to the TNC.

(8) A TNC shall ensure that the vehicles used by drivers to provide TNC services shall:

(a) Have at least four (4) doors; and

(b) Be designed to carry no more than eight (8) persons including the driver.

Section 6. TNC Drivers. (1) A TNC shall require each driver to undergo a national criminal background check before providing TNC services pursuant to KRS 281.6301.

(2) The TNC shall certify the criminal background check during the application process established in Section 2 of this administrative regulation. The national criminal background check shall be either:

(a) A comprehensive background check using fingerprint analysis; or

(b) An individual analysis using a social security number.

(3) The analysis required in subsection (1) of this section shall be conducted by a business or firm engaged in determining criminal background history.

(4) A TNC shall also require that each TNC driver:

(a) Is at least twenty-one (21) years old;

(b) Is the owner or lessee of the TNC vehicle or has a statement from the registered owner authorizing the use of the vehicle for TNC services pursuant to KRS 281.631;

(c) Is listed as an insured of the TNC vehicle;

(d) Has a valid state-issued driver's license and vehicle registration;

(e) Has personal vehicle insurance coverage as established in Section 3 of this administrative regulation;

(f) Has completed ~~a[n annual]~~ driver safety training course approved by the department such that the certification or proof of completing the safety training course shall be valid for a period of five (5) years from the date from which the driver completed the training; and

~~(g) [Provides a written or electronic affirmation that he or she is fit and able to operate a motor vehicle to provide TNC services; and~~

~~(h) Is in compliance with applicable state law and local ordinances related to the operation of a motor vehicle.~~

(5) A current list of drivers shall be kept on file with the TNC and made available for inspection by the department on request. A TNC driver's electronic file shall include the following:

(a) A current driving history record to be updated annually;

(b) The current address of the driver;

(c) A copy of a valid state-issued driver's license and the operator's license number;

(d) Proof of his or her personal vehicle insurance coverage;

(e) Proof of personal vehicle registration;

(f) Proof of the written or electronic affirmation that a TNC driver is fit and able to operate a motor vehicle to provide TNC services;

(g) Verification of the criminal background check required in subsection (1) of this section;

(h) Records indicating if a driver has refused to accept a prearranged ride and the reason for doing so;

(i) Records of complaints against a driver; and

(j) A copy of the most current vehicle inspection.

Section 7. Passenger Service. (1) A TNC shall adopt a policy of non-discrimination based on the following:

(a) Destination;

(b) Race or color;

(c) National origin;

(d) Religious belief or affiliation;

(e) Sex and sexual orientation or identity;

(f) Disability;

(g) Age; and

(h) The presence of a passenger's service animal.

(2) A TNC shall notify TNC drivers of the adopted policy of

non-discrimination established in subsection (1) of this section.

(3) After acceptance, a TNC driver may refuse to transport a passenger who is acting in an unlawful, disorderly, or endangering manner but shall comply with the non-discriminatory policy in subsection (1) of this section. A driver may also refuse to transport a passenger with a service animal if the driver has a documented medical allergy.

(4) A TNC driver shall not transport a passenger under the age of fourteen (14) unless accompanied by a person over the age of eighteen (18).

(5) A TNC shall establish policies regarding TNC driver behavior that shall include the following prohibitions:

(a) Being under the influence of alcohol or another substance or combination of substances that impair the driving ability while providing TNC services;

(b) Accepting a street hail by a potential rider;

(c) Directly soliciting a passenger or responding to a direct solicitation; and

(d) Providing services for cash.

(6) A driver shall immediately report the following to the driver's affiliated TNC:

(a) A refusal to transport a passenger and the reasons for the refusal within forty-eight (48) hours after the refusal if the refusal occurred after the ride had been accepted by the driver;

(b) Information regarding a driving citation, incident, or accident within twenty-four (24) hours after the event; or

(c) Information regarding a conviction within twenty-four (24) hours.

(7) A TNC shall provide the following information to the public on its Web site and mobile device application software:

(a) A schedule of its rates or the method used to calculate rates and peak pricing; and

(b) Information indicating a zero tolerance policy related to drug and alcohol usage by its drivers while performing TNC services and a passenger support telephone number or email address where a suspected violation may be immediately reported.

(8) A TNC shall provide the following information to a person requesting a ride through its mobile application:

(a) The expected cost of the trip if requested by a potential passenger;

(b) The first name and a photograph of the TNC driver accepting the ride request; and

(c) A photograph or description, including license plate number, of the vehicle that will be used for the ride.

(9) At the completion of the prearranged ride, a TNC shall electronically provide the passenger with a receipt showing:

(a) The point of origin and destination of the ride;

(b) The duration and distance of the ride;

(c) The cost of the ride broken down into base fare and additional charges; and

(d) The driver's first name.

Section 8. Terms of Service. (1) The TNC shall not require a hold harmless or indemnification clause in the terms of service for a TNC driver or passenger that may be used to evade the insurance requirements of this administrative regulation and KRS Chapter 281.

(2) A TNC shall not disclose to a third party the personally identifiable information of a user of the TNC's mobile application unless:

(a) The TNC obtains the user's consent to disclose personally identifiable information;

(b) The disclosure is required to comply with a legal obligation; or

(c) The disclosure is required to protect or defend the terms of use of the service or to investigate violations of the terms of use.

(3) A TNC may disclose a passenger's name and telephone number to the TNC driver ~~[in order]~~ to facilitate correct identification of the passenger by the driver or to facilitate communication between the passenger and the driver.

Section 9. Penalties. (1) A TNC that operates in violation of the requirements of this administrative regulation shall be fined \$200

pursuant to KRS 281.990(1).

(2) A TNC that operates in violation of the terms of its certificate or permit or operates without a valid permit shall be fined \$500 per occurrence pursuant to KRS 281.990(2).

(3) A TNC that fails to produce requested records and information pursuant to KRS 281.820 within forty-eight (48) hours of the request by the department shall be fined \$200.

(4) A TNC shall be responsible for an affiliated TNC driver's failure to comply with this administrative regulation if the driver's violation has been previously reported to the TNC in writing and the TNC has failed to take action within ten (10) days of the report.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Transportation Network Company Authority Application", TC 95-627, **October, 2020 [November, 2014]**; and

(b) "Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application", TC 95-605, **October, 2020 [May, 2015]**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained by accessing the department's Web site at <http://transportation.ky.gov>.

CONTACT PERSON: Jon Johnson, Staff Attorney
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**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Licensing
(As Amended at ARRS, March 8, 2021)**

601 KAR 23:030. Motor vehicle speed title process exceptions.

RELATES TO: KRS ~~[186.200]~~ 186.115, **186.200**, 186A.070, 186A.120, ~~[KRS]~~ 186A.130, 186A.165, 186A.170, 186A.520

STATUTORY AUTHORITY: KRS 186A.170(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.170(1)(b) authorizes the Transportation Cabinet, Department of Vehicle Regulation, to promulgate administrative regulations providing exceptions to the speed title procedure. This administrative regulation establishes the procedures necessary to apply to obtain a certificate of title by means of an accelerated process and establishes the process for the cabinet to issue a motor vehicle certificate of title within forty-eight (48) hours of receipt of electronic speed title application from a county clerk.

Section 1. Definitions. (1) "Kentucky Certificate of Title" is defined by 103 KAR 44:120.

(2) "Rebuilt title" means a certificate of title issued pursuant to 601 KAR 9:200 for a specific motor vehicle that had been damaged and subsequently restored to an operable condition by replacing two (2) or more major component parts.

(3) "Resident" is defined by KRS 186.010(12).

(4) "Salvage title" is defined by KRS 186A.520(1).

(5) "Speed title" or "Speed certificate of title" means an expedited issuance of a certificate of title by the Transportation Cabinet as established in KRS 186A.170.

Section 2. Application for Kentucky Certificate of Title and Registration, TC 96-182.

(1) A completed Application for Kentucky Certificate of Title and Registration shall be submitted to the Division of Motor Licensing if a vehicle changes ownership or if the owner is a new Kentucky resident.

(2) A copy of the vehicle owner's Kentucky driver's license and ownership document or documents shall be attached to the

Application for Kentucky Certificate of Title and Registration.

Section 3. Forty-eight (48) Hour Exceptions. (1) An Application for Kentucky Certificate of Title and Registration for a speed certificate of title shall, pursuant to this administrative regulation and KRS 186A.170(1)(b), be exempt from the forty-eight (48) hour requirement established in KRS 186A.170(1) if the Application for Kentucky Certificate of Title and Registration:

(a) Is electronically received by the cabinet from the county clerk on a Friday or Saturday;

(b) Does not include all of the required supporting materials as established in KRS 186.020;

(c) Includes one (1) or more supporting documents that is fraudulent, incomplete, or incorrect;

(d) Is for a classic motor vehicle project as established in 601 KAR 23:010; or

(e) Is not timely delivered to the cabinet due to delays from the postal delivery services.

Section 4. Motor Vehicles Ineligible for a Speed Title. (1) The following motor vehicles shall not be eligible for a speed title. A motor vehicle:

(a) Assembled from parts of junked, un-rebuildable, or other similar classification that disqualifies the vehicle from being titled for highway use pursuant to KRS 186.115;

(b) Subject to the classic motor vehicle project as established in 601 KAR 23:010;

(c) In a condition that requires the owner to obtain a rebuilt title as established in 601 KAR 9:200; or

(d) In a condition that requires the owner to obtain a salvage title as established in KRS 186A.520.

Section 5. Incorporation by Reference. (1) ~~[The following material is incorporated by reference:~~

~~(a)]~~ "Application for Kentucky Certificate of Title and Registration," TC 96-182, **May [March] 2020 is incorporated by reference.**

(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Vehicle Regulation, Division of Motor Licensing, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m.

(b) This material is also available on the cabinet's Web site at <http://drive.ky.gov>.

CONTACT PERSON: Jon Johnson, Staff Attorney
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**BOARD OF EDUCATION
Department of Education
(As Amended at ARRS, March 8, 2021)**

702 KAR 5:080. Bus drivers' qualifications, responsibilities, and training.

RELATES TO: KRS 156.160, 161.011, 189.540, 281A.170 – 281A.175, 49 C.F.R. Parts 380, 382 and 391

STATUTORY AUTHORITY: KRS 156.160(1), 189.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1) requires the Kentucky Board of Education to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children. KRS 189.540 requires the board to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation establishes the qualifications, training, and responsibilities of the school bus driver.

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Section 1. Licensing Requirement. A school bus driver shall have a current, valid Commercial Driver's License with applicable endorsements and restrictions pursuant to KRS 281A.170 to 281A.175.

Section 2. Medical Fitness. (1) A local board of education shall require an annual medical examination that complies with KRS 281A.175 for each school bus driver.

(2) A person shall not drive a school bus unless physically and mentally able to operate a school bus safely and in accordance with the requirements of this administrative regulation.

(3) If there is limitation of motion in joints, neck, back, arms, legs, or other body parts, due to injury or disease that may limit the driver's ability to safely perform the task of driving a school bus or performing other driver responsibilities, the person shall not be employed as a school bus driver.

(4) A temporarily-injured or ill school bus driver may be assigned duties other than driving until the employee regains the ability to safely perform school bus driver duties.

(5) An otherwise medically and physically eligible school bus driver with diabetes mellitus, may be employed as a school bus driver, if the driver possesses a valid federal Medical Examiner's Certificate as required under 49 C.F.R. Part 391.41.

(6) A school bus driver taking medication either by prescription or without prescription shall report the medication to the immediate supervisor and shall not drive if that medication may affect the driver's ability to safely drive a school bus or perform other driver responsibilities.

(7)(a) To ensure student safety, a district may require a school bus driver to pass a medical examination or a special type medical examination more often than annually at the district's expense.

(b) The medical examination shall include risk assessment and appropriate follow-through, as established in 702 KAR 1:160, Section 1, for tuberculosis upon initial employment.

(c) The medical examination shall be documented on the same form required by the Kentucky Department of Transportation to obtain a commercial driver's license and retained by the district.

Section 3. Criminal Records Check, Driving History, and Drug Testing. (1)(a) A criminal records and driving history check shall be performed by a local district on school bus drivers prior to initial employment and prior to reemployment following a break in employment.

(b)1. Employment shall be contingent upon meeting the requirements of paragraph (a) of this subsection.

2. A local board of education shall adopt policies outlining employment qualifications for school bus drivers as related to these criminal records and driving history checks.

(c) A school bus driver shall immediately report to the local superintendent or the superintendent's designee a:

1. Revocation of the driver's license;
2. Conviction for driving under the influence (DUI) or driving while intoxicated (DWI);
3. Conviction for reckless driving; or
4. Citation for a moving motor vehicle violation, including:
 - a. Driving under the influence (DUI) or driving while intoxicated (DWI);
 - b. Reckless driving; or
 - c. A violation of state or local law governing motor vehicle traffic control, other than a parking violation.

(2)(a) Controlled substance and alcohol use testing shall be a condition of employment for anyone in a safety sensitive student[pupil] transportation position, including:

1. School bus drivers;
2. School bus mechanics; and
3. Other safety-sensitive jobs requiring a Commercial Drivers License (CDL) license.

(b) The controlled substance and alcohol use testing program shall include the following tests:

1. Preemployment testing (controlled substance only);
2. Postaccident testing;
3. Random testing; and

4. Reasonable suspicion testing.

(c) Prospective employees who have tested positive for a controlled substance within the last five (5) years shall not be considered for employment to drive a school bus or the performance of safety-sensitive services related to student[pupil] transportation.

(d) A school bus driver, school bus mechanic, or anyone performing safety-sensitive student[pupil] transportation duties having a confirmed positive test for a controlled substance shall be relieved of those duties immediately and not be eligible for reemployment in a safety-sensitive student transportation position for five (5) years.

(e) A school bus driver, school bus mechanic, or anyone performing safety-sensitive student[pupil] transportation duties who tests at 0.02 percent or higher on the confirmation alcohol test immediately before, during, or immediately following the performance of these duties shall be relieved of these duties immediately and not be eligible for reemployment in a safety-sensitive student[pupil] transportation position for five (5) years.

(f) A person shall not be employed as a school bus driver if convicted within the past five (5) years of driving under the influence (DUI) or driving while intoxicated (DWI).

Section 4. Training Requirements. (1)(a) Minimum training requirements to become a school bus driver shall consist of the successful completion of the twenty-one (21) hour initial training course and follow-up reviews as set forth in the Kentucky School Bus Driver Trainer Manual.

(b) Prior to the beginning of each school year, a bus driver shall successfully complete a district specific eight (8) hour update training.

(c) Each district shall annually provide the eight (8) hour update training, which shall be aligned with the Kentucky School Bus Driver Trainer Manual, address the needs of the district's school bus drivers, and be conducted by a driver trainer certified in accordance with subsection two (2) of this section.

(d) The eight (8) hour update training shall be provided after the district's last student attendance day of the school year, but prior to opening day of the proceeding school year.

(e) If a district employs a school bus driver, after the eight (8) hour annual update training was provided to bus drivers, the district shall provide the driver with the update training prior to allowing the driver to transport students.

(f) If a school bus driver leaves the employment of a school district as a bus driver, and is subsequently reemployed in the district as a driver, the driver shall complete the eight (8) hour update training within twelve (12) months following the driver's last date of employment in the district as a bus driver.

(g) A driver who does not timely complete the annual eight (8) hour update training and recertification pursuant to this section shall be required to complete the twenty-one (21) hour initial training course.

(2)(a) A driver trainer shall satisfactorily complete the thirty-three (33) hour classroom and driving curriculum developed by the Kentucky Department of Education[department] and delivered by a Kentucky Department of Education approved[state approved] driver trainer instructor in accordance with the Kentucky School Bus Driver Trainer Manual.

(b) A driver trainer shall annually complete a minimum of six (6) hours of training developed by the Kentucky Department of Education[Department] and delivered by a Kentucky Department of Education[state] approved driver trainer in accordance with the Kentucky School Bus Driver Trainer Manual.

Section 5. First Aid and Cardiopulmonary Resuscitation (CPR). All school bus drivers, student[pupil] transportation technicians, and employees that transport students shall, at a minimum, receive basic first aid and CPR training by a person with:

(1) A valid certificate in first-aid training, including CPR, from the American Red Cross; or

(2) Equivalent training that can be verified by documentary evidence.

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Section 6. Emergency Operation. (1) If an emergency makes it necessary for the driver to leave the bus while students[pupils] are on board, the driver shall follow local board policy.

(2) A driver shall not permit a student[pupil] to operate the entrance handle or any other bus control except in case of an emergency.

Section 7. Transport of Items on School Bus. (1) A local board of education shall develop a policy regarding the transport of persons and items on a school bus.

(2) To ensure student safety, the policy shall include:

(a) A prohibition on firearms or weapons, either operative or ceremonial, except that the policy may permit archery bows, used in connection with a school archery team, to be transported inside the passenger compartment and arrows transported in the underneath storage compartment;

(b) A prohibition on fireworks or other explosive materials of any type;

(c) A prohibition on live animals, except for a service animal necessary for the student to attend school;

(d) A prohibition on glass objects or helium balloons; and

(e) A prohibition on any object that may block the bus aisle or exits or otherwise impede exiting the bus.

(3) The policy may additionally address issues related to the safe transport of students, including eating and drinking on the school bus.

Section 8. Student Assignment. (1) A school bus driver shall transport only those students[pupils] officially assigned to a bus trip unless an unassigned student[pupil] presents the driver with written permission, ***which has been signed by the school principal or a designee, granting the student permission***[~~a written permit~~] to ride the bus trip [~~that has been signed by the school principal or a designee~~].

(2) A school bus driver shall not permit an assigned student[pupil] to leave the bus at a stop other than the student's[pupils's] regular stop unless presented with written permission signed by the school principal or a designee.

(3) A school bus driver shall not transport a person who is not a student, including adult employees of the board, unless provided with written permission from the district superintendent or a designee.

Section 9. Student Seating. (1) A school bus driver shall supervise the seating of the students[pupils] on the bus and may assign a student[pupil] to a specific seat on the bus.

(2)(a) The school bus driver shall make certain the seating capability of the bus has been fully utilized before any student[pupil] is permitted to stand in the bus aisle.

(b) A school bus driver shall not permit students[pupils] to stand in the stepwell or landing area if:

1. The student[pupil] would likely fall out of the bus if the emergency door were opened; or

2. The driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

(3) A school bus driver shall report to the superintendent or a designee an overcrowded condition on the bus as soon as practicable and in accordance with local district policies.

Section 10. Loading and Unloading. (1) A school bus driver shall activate the flashing amber signal lights at least 200 feet, if available, or a sufficient distance from a bus stop to warn motorists of the intended stop.

(2) Once the bus comes to a complete stop, the school bus driver shall follow the loading and unloading procedure outlined in the Kentucky School Bus Driver Trainer Manual.

(3) A stop signal arm and flashing warning lights shall be in operation anytime students[pupils] are boarding or leaving the bus, including on school property.

(4) A school bus driver shall signal students[pupils] to board or exit only after determining that any visible approaching traffic has come to a complete stop and is not beginning to move or

attempting to pass the bus.

(5) A driver of a school bus shall be on the bus at all times students are loading or unloading.

Section 11. Fueling. For safety reasons, a driver shall not permit fueling of the bus while students[pupils] are on board the bus.

Section 12. Student Conduct. (1) A local board of education shall develop a policy regarding[~~Local boards of education shall adopt policies related to~~] student conduct on school buses.

(2) If a student's[pupils's] conduct on the bus makes it unsafe for the bus to continue on its route, the school bus driver shall follow local district policy. Ejecting a student[pupil] from the bus ***may***[***shall***] be done only in the most extreme circumstances.

(3)(b) If a student has been ejected from a bus the school bus driver shall notify the immediate supervisor who shall notify the appropriate district authorities, who shall subsequently notify the student's parent or legal guardian according to local board policy.

Section 13. Railroad. A school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The stop shall be made not less than fifteen (15) feet and not more than fifty (50) feet from the nearest track.

(1) After making the stop, the driver shall:

(a) Set the parking brake;

(b) Shift to neutral;

(c) Activate the noise abatement switch;

(d) Open the service door and driver side window; and

(e) Carefully look in each direction and listen for approaching trains before proceeding.

(2) If visibility is impaired at a crossing, after stopping the driver may allow the vehicle to roll forward to gain required visibility before proceeding.

(3) When a driver has ascertained that it is safe for the bus to cross the railroad tracks or tracks at the grade level, the driver shall:

(a) Close the bus service[entrance] door;

(b) Shift the bus into the lowest gear;

(c) Release the parking brake;

(d) Proceed immediately to cross the railroad tracks or tracks at the grade level; and

(e) Turn the noise abatement switch off when safe to do so.

Section 14. Driver Inspection. (1) A school bus driver shall perform and document a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of students[pupils].

(2) A school bus driver shall inspect the school bus at the completion of each bus trip[bus run] to ensure that no students remain in the bus.

Section 15. Road Conditions. A school bus driver shall not drive the school bus on any roadway if the conditions of the roadway, weather conditions, or other extenuating circumstances may make it unsafe.

Section 16. Driver Seat Belt. A school bus driver shall wear the driver's seat belt at all times that the bus is operated.

Section 17. Tobacco. A school bus driver shall not use tobacco products on the school bus and shall not permit students[pupils] to use tobacco products on the school bus.

Section 18. Drug and Alcohol. (1) A school bus driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug.

(2) A driver found under the influence of alcohol or any illegal drug while on duty or with remaining driving responsibilities

~~that day shall~~[~~shall, that same day,~~] be dismissed from employment.

Section 19. Incorporation by Reference. (1) The "Kentucky School Bus Driver Trainer Manual, November 2020[~~October 2019~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Pupil Transportation Branch, Department of Education, 300 Sower Boulevard, 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).

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Kentucky Department of Education
(As Amended at ARRS, March 8, 2021)

704 KAR 8:110. Kentucky Academic Standards for World Language.

RELATES TO: KRS 156.070, 156.160, 158.645, 158.6451, 158.6453(18), 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 158.6453(18), 160.290

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. KRS 158.6453(18) requires the Kentucky Department of Education to implement a process for the review and revision of academic standards with the advice of a review committee. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation incorporates by reference the Kentucky Academic Standards for World Language, which contain the general courses of study and academic content standards of world language for use in Kentucky's common schools.

Section 1. Public schools offering a world language course or program shall meet the minimum content requirements established in the Kentucky Academic Standards for World Language.

Section 2. Incorporation by Reference.

(1) The "Kentucky Academic Standards for World Language", December 2020, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 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).

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-

564-9321; email regcomments@education.ky.gov.

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, March 8, 2021)

803 KAR 2:010. Board procedures.

RELATES TO: KRS 338.051

STATUTORY AUTHORITY: KRS 338.051[~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by~~] 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 [~~the following rules and administrative regulations are adopted, governing the procedure of the Kentucky Occupational Safety and Health Standards Board~~]. This administrative regulation establishes board procedures [~~identifies in detail the procedure to be followed by the board. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.014).~~].

Section 1. Definitions. [~~As used in these rules, unless the context clearly requires otherwise:~~]

(1) "Board" is defined by/in KRS 338.015 (6) [~~means Kentucky Occupational Safety and Health Standards Board~~].

(2) "Chairman" means chairperson [~~chairman~~] of the Kentucky Occupational Safety and Health Standards Board.

(3) "Chairperson [Chairman] Pro Tem" means the board member [~~of the board that has been~~] elected by the members of the board to chair any board meeting [~~of the board~~] in the absence of the chairperson [~~chairman~~].~~]~~

~~(4) ["Interested person" means any individual, partnership, joint venture, labor union, trade association, guild, cooperative association, corporation, the Commonwealth of Kentucky or any political subdivision thereof.~~

~~(5) "Party" means any individual, partnership, joint venture, labor union, trade association, guild, cooperative association, corporation, the Commonwealth of Kentucky or any political subdivision thereof who shall have a vested interest to participate in a hearing conducted in accordance with any article of these rules or administrative regulations.~~

~~(6) ["Employee" is defined in KRS 338.015(2)] ["Employer" means any entity for whom a person is employed except those employers excluded in Section 9 of this administrative regulation].~~

~~(7) ["Employer is defined by KRS 338.015(1)] ["Employee" is defined by KRS 338.015(2) means any person employed except those employees excluded in Section 9 of this administrative regulation].~~

Section 2. The chairperson [~~All board members and the chairman~~] of the board shall [~~be appointed by the Governor who shall~~] administer the oath of office, if necessary, when the [~~said~~] board convenes [~~is convened by the Secretary of the Labor Cabinet~~].

Section 3. [~~The board shall meet for the purpose of considering, adopting, promulgating and recommending the adoption and promulgation of occupational safety and health rules, administrative regulations, standards, and secure all expertise, testimony, and evidence necessary to accomplish the purpose of KRS Chapter 338. The board may also consider the revision, revocation, or modification in whole or in part of such safety and health rules, administrative regulations, and standards.~~]

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~~Section 4. The published standards of agencies of the Commonwealth of Kentucky and recognized standards producing organizations which are not agencies of the Commonwealth which are legally incorporated by reference in these rules, have the full force and effect as if they were set forth in their entirety herein. Copies of the standards which are incorporated by reference may be examined in the office of the Secretary of State, Commonwealth of Kentucky, Frankfort, Kentucky. Copies of such private standards may be obtained from the issuing organizations.~~

~~Section 5. The board shall not adopt standards for products distributed or used in interstate commerce which are different from federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce.~~

~~Section 6. The board shall meet annually, [semiannually] or when additional meetings are needed, at the call of the chairperson [its chairman] in a location [Frankfort, Kentucky, unless another place of meeting shall be] designated by the chairperson [chairman].~~

~~Section 4. (1) [7. A majority of the board constitutes a quorum for the transaction of business.]~~

~~Board decisions [Recommendations, reports, or other decisions of the board] require a majority vote [of not less than a majority of all members present].~~

~~(2) The chairperson [chairman] shall have the same rights and duties as all other members, including the right to introduce, discuss, and vote on any matter before the board.~~

~~Section 5 [8]. (1) The board shall keep and preserve a record of the proceedings of its meetings including the time, place, members present, and votes[time and place of all of its meetings, the members present, the votes and all other formal proceedings, including the appointment of committees].~~

~~(2) Committees shall keep and preserve a similar record.[These records shall be made available to any interested person upon request at prescribed rates.]~~

~~Section 6. (1) [9. All standards, rules, and administrative regulations adopted by the board shall apply to all employers and employees within the Commonwealth except:~~

~~(1) Employees of the United States Government.~~

~~(2) Employers, employees and places of employment over which federal agencies other than the Occupational Safety and Health Administration of the United States Department of Labor exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.~~

~~Section 10. (1) If a particular standard is specifically applicable to a condition, practice, means, method, operation, or process, it shall prevail over any different general standard which might otherwise be applicable to the same conditions, practice, means, method, operation, or process.~~

~~(2) Any standard shall apply according to its terms to any employment and place of employment in any industry, even though particular standards are also prescribed for that particular industry.~~

~~(3) In the event a standard protects a class of persons larger than employees, the standard shall be applicable under these rules only to employees and their employment and place of employment.~~

~~Section 11. (1)(a) The board shall hold a public hearing prior [Prior] to the adoption, promulgation, modification, or repeal [revocation] of any standard or administrative regulation [; administrative regulation or order, the board shall conduct a public hearing].~~

~~(2) Notice of the [such] hearing stating the date, time, location, and a brief description shall be posted on the Labor Cabinet website [published] not less than ten (10) calendar days before the hearing [in a newspaper of general circulation stating the date, time and place of such hearing. A brief description of the proposed standard, administrative regulation or order shall be contained therein].~~

~~(3) [(b)] Notice [Paragraph (a) of this subsection~~

~~notwithstanding, notice] shall not be required prior to the adoption of federal standards [which have been] received by the Labor Cabinet after general notice of the board meeting [has been published].~~

~~(4) [(2)(a)] Any interested person [including an employer, employee, or representative of the employees] may petition, in writing, [to] the Secretary of the Labor Cabinet to promulgate, amend, or repeal [modify, or revoke] a standard. The petition shall articulate [should set forth] the terms, substance, effects, and reason [or the substance of the rules desired, the effects thereof if promulgated, and the reason thereof].~~

~~(5) [(b)] Within a reasonable time after the receipt of a submission pursuant to subsection 4 of this section [paragraph (a) of this subsection], the secretary shall notify the board and it [Kentucky Occupational Safety and Health Standards Board and the board] may afford an opportunity for a hearing.~~

~~Section 7. (1) [(3)] Hearings [by the board] shall be conducted in accordance with the following [rules and] procedures, which may be suspended or modified when deemed necessary [;:~~

~~(a) These rules and procedures may be suspended or modified when deemed necessary.~~

~~(b) The "presiding officer" shall be the chairman of the board or the chairman pro tem].~~

~~(2) The members of the board shall elect a chairperson [A chairman] pro tem [shall be elected] whose duties shall be to chair any meeting of the board in the absence of the chairperson [chairman].~~

~~(3) The chairperson [chairman] pro tem shall be a member of the board and shall not lose the right to vote while acting as chairperson [chairman. The chairman pro tem shall be elected by the members of the board by a majority vote].~~

~~(4) The chairperson [chairman] pro tem shall be elected for a term of two (2) years or until a [his] successor is elected. If [in the event] the chairperson [chairman] pro tem ceases to be a member of the board prior to the expiration of his or her term as chairperson [chairman] pro tem, a new chairperson [chairman] pro tem shall be elected by the board at the next board meeting [In the event both the chairman and the chairman pro tem are absent at the same meeting, a temporary chairman pro tem shall be elected for the purpose of chairing that particular meeting only].~~

~~(5) [(e)] Any interested person may appear at the hearing to offer testimony or evidence if, [either on his behalf or the behalf of any other person;] [provided, that] at the opening of the [such] hearing, or at an earlier time as the chairperson directs [presiding officer shall by appropriate notice direct], the[such] person files[shall file] with the chairperson [presiding officer] a notice of [his] appearance which shall set forth the:~~

~~(a) [1.] Name and address of person appearing;~~

~~(b) [2.] Name and address of person represented, if any; and~~

~~(c) [3.] Approximate length of time [represented] for presentation.~~

~~(6) Each [In order to maintain orderly and expeditious procedure, each] person filing a notice of appearance will be notified, if practicable, of the approximate day and the place at which he or she may offer evidence at [before] the hearing. If the[such] person does not appear at the time set in the notice, he or she will not be permitted to offer evidence at any time except by special permission of the chairperson [presiding officer].~~

~~(7) At the discretion of the chairperson [presiding officer], the hearing may be continued [from day to day, or adjourned] to a later date, or to a different place, by chairperson announcement [thereof] at the hearing [by the presiding officer, or by other appropriate notice].~~

~~(f) All evidence must be presented under oath or affirmation, which shall be administered by the presiding officer.~~

~~(g) For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the chairman and having power to administer oaths.~~

~~(h) Any party desiring to take the deposition of a witness may make application in writing to the chairman setting forth:~~

1. The reasons why such depositions should be taken;
2. The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;

3. The name and address of each witness; and

4. The subject matter concerning which each witness is expected to testify.

(i) Such notice as the chairman may order shall be given by the party taking the deposition to every other party.

(j) Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two (2) copies thereof, in an envelope and mail the same by registered mail to the chairman. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance existed at the time of the hearing.

(k) Whenever appropriate to a just disposition of any issue in a hearing, the chairman may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment involved.

(l) The hearing shall be stenographically reported and a transcript made which will be available to any person by prescribed rates upon request made to the official reporter.

(m) Written documents or exhibits, except as otherwise permitted by the presiding officer, must be offered in evidence by a person who is prepared to testify as to the authenticity and trustworthiness thereof, and who shall, at the time of offering the documentary exhibits, make a brief statement as to the contents and manner of preparation thereof.

(n) Written documents and exhibits shall be tendered in duplicate and the persons preparing the same shall be prepared to supply additional copies if such are ordered by the presiding officer. Where evidence is embraced in a document containing matter not intended to be put in evidence, such document will not be received, but the person offering the same may present to the presiding officer the original document together with two (2) copies of those portions of the documents intended to be put in evidence. Upon presentation of such copies in proper form, the copies will be received in evidence.

(o) Subpoenas requiring the attendance of witnesses or the presentation of documents at any designated place of hearing may be issued by the presiding officer at his discretion, and any person appearing in the proceeding may apply in writing for the issuance by the presiding officer of the subpoena. Such application shall be timely and shall identify exactly the witness or document and state fully the nature of the evidence proposed to be secured.

(p) Witnesses summoned by the presiding officer shall be paid the same fee and mileage as are paid witnesses in the courts of the Commonwealth of Kentucky. Witness fees and mileage shall be paid by the party at whose instance witnesses appear, and the presiding officer before issuing a subpoena may require a deposit of an amount adequate to cover the fees and mileage involved.

(q) The rules of evidence prevailing in courts of law or equity shall not be controlling.

(r) The presiding officer may, at his discretion, permit any person appearing in the proceeding to cross-examine any witness offered by another person insofar as is practicable, and to object to the admission or exclusion of evidence by the presiding officer. Requests for permission to cross-examine a witness offered by another person and objections to the admission or exclusion of evidence shall be stated briefly with the reasons for such request or objection. Such requests or objections shall become a part of

the record, but the record shall not include argument thereon except as ordered by the presiding officer.]

Section 8 [42]. (1) The chairperson may [chairman shall have the power to] appoint standing and special committees.

(2) A committee shall meet at the call of its chairperson [chairman] or the chairperson [chairman] of the board at the time and place designated by either chairperson [the person making such call].

Section 13. Any rule, administrative regulation or standard promulgated, modified or revoked under these rules may contain a provision delaying its effective date for such period (not in excess of ninety (90) days) as the board determines may be necessary to ensure that affected employees and employers will be informed of the existence, modification or revocation of the rule, administrative regulation or standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the rule, administrative regulation or standard.

Section 14. Any interested person may at any time petition the board in writing to revise, amend, or revoke any provision of these rules. The petition shall set forth either the terms or the substance of the rule desired, with a concise statement of the reasons therefor and the effects thereof.]

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, Telephone: (502) 564-4107, Facsimile: (502) 564-4769, Email: Robin.Maples@ky.gov.

**LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, March 8, 2021)**

803 KAR 25:300. Mediation program.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.276

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.276(2) requires [provides that] the Commissioner of the Department of Workers' Claims to [shall] promulgate administrative regulations necessary to establish and implement a mediation program, which shall prescribe the qualifications and duties of mediators; a process for the designation of mediators; procedures for the conduct of mediation proceedings; and the issues which shall be subject to mediation. This administrative regulation establishes a mediation program for mediation of disputes as to the entitlement to compensation under KRS Chapter 342.

Section 1. Definitions. (1) "Administrative law judge" or "ALJ" is defined by [in] 803 KAR 25:010 Section 1(1).

(2) "Calendar day" means all days in a month, including Saturday, Sunday, and any day which is a legal holiday.

(3) "Mediation" [as used in this regulation] means a process where a third party facilitates discussion among the parties in an effort to resolve disputes regarding entitlement to the compensation provided in KRS Chapter 342.

Section 2. Qualifications and Duties of Mediators. (1) A mediator shall be an administrative law judge.

(2) A mediator shall not conduct the mediation of a claim, or any of the issues involving a claim, presently assigned to him or her as an administrative law judge.

(3) The mediator shall:

(a) Explain the mediation process to the parties at the beginning of the session;

(b) Conduct the mediation in a fair and unbiased manner; and

(c) Maintain the confidentiality of the mediation.

Section 3. Process for Designation of Mediators. The chief administrative law judge shall designate one (1) or more administrative law judges to serve as a mediator on a rotating basis consistent with this administrative regulation.

Section 4. Procedures for Conduct of Mediation Proceedings.

(1) At any time after the claim has been initiated with the Department of Workers' Claims, any party may file a motion with the administrative law judge to have the claim, or any part of the claim, referred to mediation under the program outlined in this administrative regulation. The motion shall identify the issues to be mediated.

(2) An opposing party shall have seven (7) calendar days to file a response to the motion seeking mediation.

(3) The administrative law judge shall either grant or deny the motion within ten (10) calendar days of the filing of the motion to refer to mediation.

(4) The parties may file a joint motion to refer to mediation. The administrative law judge shall order that the claim or parts of the claim be referred to mediation within seven (7) calendar days of the filing of the joint motion.

(5) The administrative law judge may refer a claim or part of a claim to mediation [*sua sponte*] at any time after being assigned the claim.

(6) Upon the referral, the administrative law judge or the mediator shall confer with the parties for the purpose of scheduling the mediation. The mediator shall issue a mediation order within seven (7) calendar days of the referral which shall include:

(a) The date, time, allotted time, location of the mediation, and whether the mediation shall be conducted in person, by telephone, or by video conferencing technology;

(b) The required attendees of the mediation; and

(c) The issue(s) to be mediated.

(7) Except by agreement of the parties or by order of the mediator, all counsel of record and all parties shall attend the mediation.

(a) An insured party shall be deemed to have appeared by the physical presence of a representative of the insurance carrier, other than defense counsel, with full settlement authority.

(b) A public entity shall be deemed to have appeared by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity.

(c) An entity other than a public entity or an insurance carrier for an insured party shall be deemed to appear by the physical presence of a representative, other than the party's counsel of record, who has full authority to settle without further consultation or approval.

(d) The requirement to physically attend the mediation may be modified to telephonic attendance or attendance by video conference technology by stipulation of the parties or by order of the mediator.

(8) Parties entering into mediation shall be prepared to mediate the disputed issues listed in the mediation order and shall mediate all issues listed in good faith.

(9) Mediation shall be confidential and considered as settlement negotiations for purposes of KRE 408.

(10) The mediator shall conduct the mediation in accordance with Section 2(3) of this administrative regulation.

(11) If the parties are able to reach a settlement of all disputed issues, the mediator shall issue a "Notice of Settlement at Mediation" within seven (7) calendar days after the mediation stating that all claims have been resolved. The "Notice of Settlement at Mediation" shall be filed with the Department of Workers' Claims and served on all parties.

(12) If the parties are unable to reach a settlement of any disputed issues, the mediator shall issue a written "Notice of No Settlement at Mediation" within seven (7) calendar days after the mediation stating that no disputes have been resolved. The "Notice of No Settlement at Mediation" shall be filed with the Department of Workers' Claims and served on all parties.

(13) If the parties are able to reach a partial settlement of the disputed issues, the mediator shall issue a written "Notice of Partial

Settlement at Mediation" setting forth all the resolved issues and unresolved issues within seven (7) calendar days after the mediation. The "Notice of Partial Settlement at Mediation" shall be filed with the Department of Workers' Claims and served on all parties.

Section 5. Issues Subject to Mediation.

(1) All issues arising from disputes as to the entitlement to benefits under KRS Chapter 342 shall be subject to mediation under this administrative regulation if so ordered by an administrative law judge.

(2) Nothing in this administrative regulation shall prevent the parties from using a private mediator at their own cost to resolve disputes as to the entitlement to benefits under KRS Chapter 342.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email dale.hamblin@ky.gov.

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(As Amended at ARRS, March 8, 2021)

806 KAR 9:360. Pharmacy Benefit Manager License.

RELATES TO: KRS 14A.4-010, 304.1-050, 304.2-310, 304.9-020, 304.9-053, 304.9-054, 304.9-055, 304.9-133, 304.10-030, 304.10-040, 304.17A-162, 304.17A-163, 304.17A-165, 304.17A-440, 304.17A-535, 304.17A-607, 304.17A-617-304.17A-633, 45 C.F.R. 156.122

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-053(2), 304.9-054(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-053(2) requires a pharmacy benefit manager seeking a license to apply to the commissioner in writing on a form provided by the department. KRS 304.9-054(6) requires the department to promulgate administrative regulations to implement and enforce the provisions of KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-162. This administrative regulation establishes requirements for the licensure of pharmacy benefit managers.

Section 1. Definitions. (1) "Admitted insurer" is defined by KRS 304.10-030(1).

(2) "Commissioner" is defined by KRS 304.1-050(1).

(3) "Department" is defined by KRS 304.1-050(2).

(4) [~~"Maximum allowable cost" is defined by KRS 304.17A-161(3).~~]

~~(5)]~~ "Nonadmitted insurer" is defined by KRS 304.10-030(8).

~~(5)](6)]~~ "Pharmacy benefit manager" is defined by KRS 304.9-020(15).

Section 2. Initial License and Renewal. (1) An applicant for a pharmacy benefit manager license or renewal license from the commissioner shall submit the following to the department in the format as outlined in the instructions[instruction] on the Pharmacy Benefit Manager License Application [hard-copy-format] [~~to the department~~].

(a) Form PBM, The Pharmacy Benefit Manager License Application;

(b) The fee set forth in KRS 304.9-053(3) and the penalty fee, if applicable, set forth in KRS 304.9-053(5);

(c) The following evidence of financial responsibility:

1. A certificate of insurance from either an admitted insurer or a nonadmitted insurer, in accordance with KRS 304.10-040, stating that the insurer has and will keep in effect on behalf of the pharmacy benefit manager a policy of insurance covering the legal

liability of the licensed pharmacy benefit manager's erroneous acts or failure to act in its[his or her] capacity as a pharmacy benefit manager, and payable to the benefit of any aggrieved party in the sum of not less than \$1,000,000; or

2. A cash surety bond issued by a corporate surety authorized to issue surety bonds in this commonwealth, in the sum of \$1,000,000, which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable;

(d) The name of at least one (1) responsible individual who shall be responsible for the pharmacy benefit manager's compliance with KRS Chapter 304 and KAR Title 806 and who is:

1. Licensed as an administrator in Kentucky; and
2. Designated in accordance with KRS 304.9-133;

(e) If performing utilization review in accordance with KRS 304.17A-607, the pharmacy benefit manager's utilization review registration number;

(f) The following written policies and procedures to be used by the pharmacy benefit manager:

1. ~~[Appeals dispute resolution process required by KRS 304.17A-617 to 304.17A-633;~~

~~2.] [Maximum allowable cost appeals process:] An appeals process for any pricing system used to determine the cost of a generic drug required by KRS 304.17A-162;~~

~~3.] Exceptions policy [and override policy] required by 45 C.F.R. 156.122(c) and KRS 304.17A-535(4)[304.17A-163, and KRS 304.17A-165]; and~~

~~4.] Pharmacy and Therapeutics committee membership standards and duties [as] required by 45 C.F.R. 156.122(a); [and]~~

(g) Proof of a registered agent and office[registration] with the Kentucky Secretary of State in accordance with KRS 14A.4-010;

(h) Provide a listing of all clients PMB provides services to including any non-ERISA self-funded or governmental plans; and

(i) Provide a listing of any delegated or contracted companies that perform part of the PBM services.

(2)(a) Upon receipt of a complete application as required by subsection (1) of this section, the commissioner shall review the application and:

- 1.a. Approve the application; and
- b. Issue the applicant the pharmacy benefit manager license;
2. Notify the applicant that additional information is needed in accordance with paragraph (b) of this subsection; or
3. Deny the application in accordance with paragraph (c) of this subsection.

(b)1. If supplemental or additional information is necessary to complete the application, the applicant shall submit that information within thirty (30) days from the date of the notification from the commissioner.

2. If the missing or necessary information is not received within thirty (30) days from the date of the notification, the commissioner shall deny the application unless good cause is shown. To determine if the applicant has demonstrated good cause, the commissioner shall weigh the justification provided against any other issues, including [such as] if the applicant had submitted any prior good cause excuses for the same request. Some examples of good cause include:

a. Personnel-related [Personnel-related] issues, including [such as] the individual responsible for responding was transferred, terminated, or became incapacitated due to illness;

b. A need to obtain information that was not immediately available and had to be requested from other sources;

c. A lack of sufficient resources to respond to large requests; and

d. Information technology ~~[(IT)]~~, operational, or equipment malfunctions causing unexpected delays.

(c) If the commissioner determines that the applicant does not meet the requirements for licensure, or if the application is denied pursuant to paragraph (b)2. of this subsection, the commissioner shall:

1. Provide written notice to the applicant that the application has been denied; and
2. Advise the applicant that a request for a hearing may be

filed in accordance with KRS 304.2-310.

(3)(a) Except as provided in paragraph (b) of this subsection, a pharmacy benefit manager license shall:

1. Be renewed annually as required by subsection (4) of this section; or

2. Expire on March 31.

(b) If the license was issued on or before January 1, 2017, the license shall expire on March 31, 2018, if not renewed as required by subsection (4) of this section.

(4)(a) A renewal application shall include the items required by subsection (1) of this section.

(b) If the renewal application is submitted between April 1 and May 31, the application required by subsection (1) of this section shall be accompanied by a penalty fee of \$500 in accordance with KRS 304.9-053(5).

Section 3. Notice of Changes. Within thirty (30) days of any change, a licensee shall notify the commissioner of all changes among its members, directors, officers, and other individuals designated or registered to the license, any changes to the[including a] listing of clients [identifying any self-funded non-ERISA plans] and [any] delegated contractors provided in the most recent application filed by the licensee. and any changes to its written policies and procedures submitted pursuant to Section 2(1)(f) of this administrative regulation.

Section 4. Incorporation by Reference. (1) "Pharmacy Benefit Manager License Application", Form PBM, 02/2021[07/2020] [04/2017], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street [245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, March 8, 2021)**

807 KAR 5:056. Fuel adjustment clause.

RELATES TO: KRS 61.870 - 61.884, 143.020, Chapter 278
STATUTORY AUTHORITY: KRS 278.030(1), (2), 278.040(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the Public Service Commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.030(1) authorizes utilities to demand, collect, and receive fair, just, and reasonable rates. KRS 278.030(2) requires every utility to furnish adequate, efficient, and reasonable service. This administrative regulation establishes the requirements with respect to the implementation of automatic fuel adjustment clauses by which electric utilities may immediately recover increases in fuel costs subjected to later scrutiny by the Public Service Commission.

Section 1. Fuel Adjustment Clause. Fuel adjustment clauses that are not in conformity with the requirements established in subsections (1) through (6) of this section are not in the public interest and may result in suspension of those parts of the rate schedules based on severity of the nonconformity and any history of nonconformity. ~~[:]~~

(1) The fuel adjustment clause shall provide for periodic adjustment per Kilowatt Hour (KWH) of sales equal to the difference between the fuel costs per KWH sale in the base period and in the current period according to the following formula:

$$\text{Adjustment Factor} = \frac{F(m)}{S(m)} - \frac{F(b)}{S(b)}$$

Where F(b) is the cost of fuel in the base period, F(m) is the cost of fuel in the current period, S(b) is sales in the base period, and S(m) is sales in the current period, all as **established in subsections (2) through (6) of this section**~~(defined below)~~.

(2) F(b)/S(b) shall be determined so that on the effective date of the commission's approval of the utility's application of the formula, the resultant adjustment shall be equal to zero.

(3) Fuel costs (F) shall be the most recent actual monthly cost, based on weighted average inventory costing, of:

(a) Fossil fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants, plus the cost of fuel that would have been used in plants suffering forced generation or transmission outages, but less the cost of fuel related to substitute generation; plus

(b) The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than as established in paragraph (c) of this subsection, but excluding the cost of fuel related to purchases to substitute for the forced outages; plus

(c) The net energy cost of energy purchases, exclusive of capacity or demand charges irrespective of the designation assigned to the transaction, if the energy is purchased on an economic dispatch basis. Costs, such as the charges for economy energy purchases, the charges as a result of scheduled outage, and other charges for energy being purchased by the buyer to substitute for the buyer's own higher cost energy, may be included; and less

(d) The cost of fossil fuel recovered through intersystem sales, including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis.

(4) Forced outages ~~are~~**shall include**~~[are]~~ all nonscheduled losses of generation or transmission that require substitute power for a continuous period in excess of six (6) hours. If forced outages are not the result of faulty equipment, faulty manufacture, faulty design, faulty installations, faulty operation, or faulty maintenance, but are Acts of God, riot, insurrection, or acts of the public enemy, then the utility may, upon proper showing, with the approval of the commission, include the fuel cost of substitute energy in the adjustment. In making the calculations of fuel cost (F) in subsection (3)(a) and (b) of this section, the forced outage costs to be subtracted shall be no less than the fuel cost related to the lost generation until approval is obtained.

(5) Sales (S) shall be all KWH's sold, excluding intersystem sales. Utility used energy shall not be excluded in the determination of sales (S). If, for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to:

- (a) Generation; plus
- (b) Purchases; plus
- (c) Interchange-in; less
- (d) Energy associated with pumped storage operations; less
- (e) Intersystem sales referred to in subsection (3)(d) **of this section**~~(above)~~~~[of this section]~~; less

(f) Total system losses.

(6) The cost of fossil fuel shall only include the cost of the fuel itself and necessary charges for transportation of the fuel from the point of acquisition to the unloading point, as listed in Account 151 of FERC Uniform System of Accounts for Public Utilities and Licensees, less any cash or other discounts.

Section 2. Filing Requirements. (1) If a utility initially proposes a fuel adjustment clause, the utility shall submit copies of each fossil fuel purchase contract not otherwise on file with the commission and all other agreements, options, amendments, modifications, and similar documents related to the procurement of fuel supply or purchased power.

(2) Any changes in the contracts or other documents filed pursuant to subsection (1) of this section, including price escalations, and any new agreements entered into after the initial submission, shall be submitted at the time they are entered into.

(3) If fuel is purchased from utility-owned or controlled sources, or the contract contains a price escalation clause, those facts shall

be noted, and the utility shall explain and justify them in writing.

(4) The monthly fuel adjustment shall be filed with the commission no later than ten (10) days before it is scheduled to go into effect, along with all the necessary supporting data to justify the amount of the adjustment.

(5) Copies of all documents required to be filed with the commission under this administrative regulation shall be open and made available for public inspection at the office of the Public Service Commission pursuant to the provisions of KRS 61.870 ~~[to]~~ **through** 61.884.

Section 3. Review of Fuel Adjustment Clauses. (1) Fuel charges that are unreasonable shall be disallowed and may result in the suspension of the fuel adjustment clause based on the severity of the utility's unreasonable fuel charges and any history of unreasonable fuel charges.

(2) The commission on its own motion may investigate any aspect of fuel purchasing activities covered by this administrative regulation.

(3)(a) At six (6) month intervals, the commission shall conduct a formal review and may conduct public hearings on a utility's past fuel adjustments.

(b) The commission shall order a utility to charge off and amortize, by means of a temporary decrease of rates, any adjustments the commission finds unjustified due to improper calculation or application of the charge or improper fuel procurement practices.

(4)(a) Every two (2) years following the initial effective date of each utility's fuel clause, the commission shall conduct a formal review and evaluate past operations of the clause, disallow improper expenses and, to the extent appropriate, reestablish the fuel clause charge in accordance with Section 1(2) of this administrative regulation.

(b) The commission may conduct a public hearing if the commission finds that a hearing is necessary for the protection of a substantial interest or is in the public interest. [

~~(5) For any contracts entered into on or after December 1, 2019, the commission shall, in determining the reasonableness of fuel costs in procurement contracts and fuel procurement practices, evaluate the reasonableness of fuel costs in contracts and competing bids based on the cost of the fuel less any coal severance tax imposed by any jurisdiction.]~~

CONTACT PERSON: John E.B. Pinney, Acting General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-2587, mobile (502) 545-6180, fax (502) 564-7279, email Jeb.Pinney@ky.gov.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, March 8, 2021)**

810 KAR 4:010. Horses.

RELATES TO: KRS 230.215

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission (the "commission") to promulgate administrative regulations regulating horse racing in Kentucky. This administrative regulation establishes requirements for the participation of horses in horse race meetings, protects the safety and welfare of the horse, and creates a level playing field for participants thereby protecting the integrity of pari-mutuel~~[pari-mutuel]~~ wagering.

Section 1. Definition. "Electronic registration system" means a software application available online and approved by the commission that allows an association's racing secretary or the secretary's designee, or horse identifier or the identifier's designee, full access to horse and trainer records from all tracks in North America, including current owner information.

Section 2. Registration and Identification Required.

(1) A horse shall not be entered or raced in Kentucky[this state] unless:

(a) The horse is duly registered, as applicable, in The Jockey Club breed registry, the American Quarter Horse Association, the Appaloosa Horse Club, the Arabian Horse Association Registry, or the American Paint Horse Association, or their respective successors; and

(b)1. The registration certificate, virtual or digital certificate, or racing permit issued by the applicable breed registry for the horse is on file with the racing secretary; or

2. The information contained on the registration certificate, virtual or digital certificate, or racing permit is available to the racing secretary through the electronic registration system.

(2) The stewards may at any time require presentation of a horse's registration certificate, virtual or digital certificate, or racing permit or other proof of ownership.

(3) Upon claim, sale, or any other transfer of ownership, the horse's registration certificate or racing permit shall be given to the new owner, and any virtual or digital certificate shall be transferred to the new owner electronically. The new owner shall report the change in ownership to the stewards.

(4) If the electronic registration system fails for any reason, the stewards may require presentation of a horse's registration certificate, virtual or digital certificate, or racing permit prior to a horse being entered or raced in Kentucky.

Section 3. Ringers Prohibited.

(1) A horse shall not be entered or raced in Kentucky[this state] designated by a name other than the name under which the horse is currently registered with the applicable breed registry. If a horse's name is changed with the applicable breed registry, and the horse has raced under its previous name, the horse's former name shall be shown parenthetically in the daily race program the first three (3) times the horse races after the name change.

(2) A person shall not cause or permit the correct identity of a horse to be concealed or altered. A person shall not refuse to reveal the correct identity of a horse that he or she owns or is in his or her care to a racing official or member of the regular news media.

(3) A horse shall not race in Kentucky[this state] unless identified by:

(a) A legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau, or by the comparable authorized organization applicable to the breed of the horse;

(b) An electronic horse identification microchip that accurately identifies the horse, [and] is compliant with the international standards ISO 11784, is verified by agents of the Thoroughbred Racing Protective Bureau, or its successor, and is documented in The Jockey Club database or by the comparable authorized organization applicable to the breed of the horse; or

(c) With regards to a horse from a foreign jurisdiction participating in a graded stakes race, has otherwise been correctly identified to the stewards' satisfaction.

(4) A horse shall not be entered or raced in Kentucky[this state] if previously involved in a "ringer" case to the extent that:

(a) A person having control of the horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with The Jockey Club; or

(b) The person having control of the horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

Section 4. Denervating.

(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 or digital 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 or digital 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 administrative regulation and participates in the purse distribution, then 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 administrative regulation and is claimed, then a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours after the race requesting 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 posted in the racing secretary's office.

Section 5. Health Certificate Required.

(1) A horse shall not be stabled on the grounds of a licensed association or any training center under the jurisdiction of the commission unless a Certificate of Veterinary Inspection is issued by an accredited veterinarian:

(a) Not more than ten (10) days prior to the horse's arrival on the grounds; or

(b) Within a lesser interval as prescribed by the racing association in consultation with the Kentucky[State] Department of Agriculture.

(2) Notice of this requirement shall be included in the stall application of all licensed associations and training centers under the jurisdiction of the commission and all condition books of licensed associations.

Section 6. Workouts. A horse shall not be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 7. Thoroughbred Age Restrictions.

(1) A maiden six (6) years of age or older that has made five (5) life time starts on the flat shall not be entered or start.

(2) A first time starter five (5) years of age or older shall be approved by a commission veterinarian prior to entry.

Section 8. Other Age Restrictions. A quarterhorse, paint horse, Arabian, or Appaloosa horse six (6) years of age or older shall not be entered or raced in a race restricted to maidens. A horse thirteen (13) years of age or older shall not be entered or raced.

Section 9. Fillies and Mares Breed.

(1) A filly or mare that has been covered by a stallion shall:

(a) Be so reported to the racing secretary prior to being entered in a race; and

(b) Not be entered in a claiming race, unless a written release from the stallion owner is attached to the filly's or mare's registration certificate, or otherwise provided to the stewards, indicating that the stallion service fee has been paid or satisfied.

(2) A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office.

(3) A filly or mare in-foal shall not be entered in a race 120 days or more after the date of last cover.

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Section 10. Serviceable for Racing. A horse shall not be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time require a horse on association grounds to be examined by a qualified person;

(2) Is posted on a veterinarian's list, stewards' list, or starter's list in any racing jurisdiction;

(3) Has previously raced, but has made no starts in the last 365 days or more, unless approved by a commission veterinarian prior to entry;

(4) Is suspended in any jurisdiction;

(5)~~[(4)]~~ Has been administered any drug in violation of 810 KAR 8:010;

(6)~~[(5)]~~ Is blind or has seriously impaired vision in both eyes;

(7)~~[(6)]~~ Is not correctly identified to the satisfaction of the stewards; or

(8)~~[(7)]~~ Is owned wholly or in part by or is trained by an ineligible person.

Section 11. Equipment.

(1) Riding crops and blinkers shall be used consistently on a horse while racing.

(2) Permission to change use of any equipment used on a horse from its previous start shall be obtained from the stewards.

(3) A horse's tongue may be tied down during a race with a clean bandage or gauze.

(4) A horse's bridle shall not weigh more than two (2) pounds.

(5) Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather.

(6) War bridles and bitless bridles shall not be used.

(7) Bar shoes may be used for racing only with permission of the stewards.

(8) Any goading device, chain, spurs, electrical or mechanical device, or appliance, except for a riding crop, that can be used to alter the speed of a horse shall not be used on a horse in a race or workout.

(9)(a) Any riding crop shall be subject to inspection and approval by the stewards or the clerk of the scales to ensure conformity with the specifications of paragraphs (c) through (e) of this subsection.

(b) Only riding crops meeting the specifications of this subsection, including the mandatory shock absorbing characteristics, may be used in thoroughbred racing and training.

(c) A riding crop shall have a:

1. Maximum weight of eight (8) ounces;
2. Maximum length, including flap, of thirty (30) inches; and
3. Minimum diameter of the shaft of three-eighths (3/8) inch.

(d)1. The only additional feature that may be attached to the riding crop is a flap that shall have a:

a. Maximum length from the end of the shaft of one-half (1/2) inch; and

b. Maximum width of one and six-tenths (1.6) inches, with a minimum width of eight-tenths (0.8) inch;

2. The flap from the end of the shaft shall not contain any reinforcements or additions;

3. There shall not be binding within seven (7) inches of the end of the flap;

4. The contact area of the shaft shall be smooth, with no protrusion or raised surface, and covered by shock absorbing material throughout its circumference; and

5. The flap shall have similar shock absorbing characteristics to that of the contact area.

(e) A riding crop shall not have:

1. Stingers or projections extending through the hole of a popper; and

2. Any metal parts.

(10)(a) The following shall not be used on the front shoes of horses while racing or training on any racing surface:

1. Horse shoes that have toe grabs;
2. Bends;
3. Jar calks;
4. Stickers; and

5. Any other traction device worn on the front shoes of horses.
(b) Wear plates with a height no greater than two (2) millimeters may be used on the front shoes of horses while racing or training.

(11) Indiscriminate or brutal use on a horse of a riding crop or any other equipment, as determined by the stewards, at any time on the grounds of a licensed racing association or training center under the jurisdiction of the commission shall be prohibited.

Section 12. Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary and to the appropriate breed registry applicable to the horse. The alteration shall be noted on the horse's registration certificate, racing permit, virtual or digital certificate, or entry in the electronic system.

Section 13. Reporting Death of Horse. A licensed racing association or training center under the jurisdiction of the commission shall report the death or euthanization of any horse on its grounds immediately to the chief commission veterinarian.

Section 14. Postmortem Examination. A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission. If a postmortem examination is conducted:

(1) All shoes and equipment on the horse's legs shall be left on the horse;

(2) The commission, through its designee:

(a) Shall take possession of the horse upon death;

(b) Shall, if commission personnel are present, collect and submit for analysis blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization occurs; and

(c) Shall coordinate with the owner or owner's licensed authorized agent to determine and address any insurance requirements.

(3) The remains of the horse shall not be returned after completion of the postmortem examination.

(4) The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation of 810 KAR 8:010.

Section 15. Incorporation by Reference.

(1) "ISO 11784", 2004 is incorporated by reference.

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

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone(859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, March 8, 2021)

815 KAR 20:150. Inspections and tests.

RELATES TO: KRS 318.090, 318.130, 318.134, 318.140, 318.160, 318.170

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code. KRS 318.160 requires a person who constructs, installs, or extensively alters any plumbing, sewerage, or water supply system of any public building or establishment to obtain approval of the department in writing. This administrative regulation establishes the requirements for the

tests and inspections that are necessary in order to ensure compliance with 815 KAR Chapter 20, the Kentucky State Plumbing Code.

Section 1. Required Inspections and Tests. (1) Required inspections. The department shall inspect the following to ensure compliance with the code:

- (a) The water distribution system;
- (b) The soil, waste, and vent system;
- (c) The fixtures and fixture traps;
- (d) Appurtenances; and
- (e) All connections in a plumbing system.

(2) Required tests. Tests shall be made separately or as follows:

- (a) The house sewer and its branches from the property line to the house drain;
 - (b) The house drain including its branches;
 - (c) The soil, waste, and vent system;
 - (d) Inside rain water conductors; and
 - (e) The final inspection and air test which shall include the complete plumbing system as required by Section 3(2) of this administrative regulation, exclusive of the house sewer.
- (3) Rough-in inspection.
- (a) The plumbing system shall not be covered until it has been inspected, tested, and approved.
 - (b) A rough-in inspection shall be conducted prior to the covering or concealment of the plumbing system.
 - (c) If any part of a plumbing system is covered or concealed before being inspected, tested, and approved, it shall be uncovered, or unconcealed and tested as required.
 - (4) Condemned buildings. In buildings condemned by other authorities because of unsanitary conditions of the plumbing system, necessary alterations shall be considered a new plumbing system.

(5) Tests of alterations, extensions, or repairs. Any alterations, repairs, or extensions that require more than ten (10) feet of soil, waste, or vent piping shall be inspected and tested as required by Section 3(2) of this administrative regulation.

Section 2. Permit Holder Requirements. The person procuring the plumbing permit shall:

- (1) Furnish all equipment, material, and labor necessary for inspections and tests;
- (2) Notify the department representative and request a rough-in inspection for the plumbing system prior to the plumbing system being concealed or covered within the floors or walls of a building; and
- (3) Notify a department representative and request a final inspection and air test upon completion of the installation.

Section 3. Requirements for Remote Inspection. (1) A master plumber may request a plumbing inspection from the department conducted by live video or submission of recorded video for photograph if the master plumber holds a certificate of completion issued by the department.

(2) Certificate of completion. (a) The department shall issue a certificate of completion to a master plumber who has successfully completed a training course provided by the department that shall cover the following topics:

- 1. Technology necessary for effective remote inspection;
- 2. Information to be conveyed and shown by the master plumber to the department; and
- 3. How to show corrections made to installations that failed remote inspection.

(b) A certificate of completion issued to a master plumber pursuant paragraph (a) of this subsectionsection 3(2)(a) of this administrative regulation shall be valid for a period of three (3) years from the date of issuance, after which the certificate shall expire unless renewed prior to expiration as established in paragraph (c) of this subsection. A master plumber whose certificate of completion has expired shall not be eligible to request or receive remote inspections.

(c) A certificate holder may renew his or hertheir certificate

of completion by completing thea training course established in paragraph (a) of this subsectiondescribed in section 3(2)(a) of this administrative regulation.

(3) The department shallmay deny a request for remote inspection if:

(a) 1. The scope of the work is too complex for remote inspection.

2. Examples of work too complex for remote inspection shall include:

- a. Medical gas installation inspections; and
- b. Inspections of plumbing installations that require multiple visits from the inspector prior to the system being placed on a test.

(b) 1. Remote inspection is not feasible or practical.

2. Examples of remote inspections that are not feasible or practical shall include:

- a. Inspections during which cellular or internet reception is not consistent or reliable;
- b. Poor video quality; and
- c. Technical issues that prevent clear inspection; or

(c) 1. The situation would not provide an adequate inspection if done remotelyAny other reason is articulated in writing to the certificate holder by the department.

2. Examples of situations that would not provide adequate inspection if done remotely shall include:

- a. Underground plumbing installations that require more than one (1) inspection;
- b. Rough-in inspections that would require more than one (1) inspection to fully inspect the entire rough-in piping system; and
- c. Final plumbing inspections on new construction.

(4) Remote inspection seals. (a) A certificate holder may request numbered remote inspection seals from the department to place on completed plumbing installations that are approved for remote inspection. The request shall be made by by submitting a completed form PLB-4, Application for Plumbing Remote Inspection Seals, to the department.

(b) Except for the initial request for remote inspection seals, a certificate holder requesting seals shall submit a completed form PLB-5, Plumbing Remote Inspection Seal Verification, to the department prior to receiving remote inspection seals.

(c) A certificate holder shall:

- 1. Affix a seal to a completed plumbing installation for which he or she has been approved for remote inspection;
- 2. Not affix a seal to a plumbing installation ifwhen he or she has not submitted videos for photographs of the installation to the department or participated in a live video inspection with the department; and
- 3. Not allow seals he or she received from the department to be used by another.

(d) The department shall:

- 1. Assign an inspection number to the permit and seal for a plumbing installation that has successfully passed all required remote inspections and tests; and
- 2. Complete remote inspections that are not live video within three (3) business days of receipt of videos for photographs of the completed plumbing installation eligible for remote inspection.

(e) A property owner, property owner's designee, or certificate holder shall write the inspection number assigned by the department on the seal the inspection number is assigned to upon successful passage of all required inspections and tests.

(5) Notification of noncompliance. The department shall immediately issue a notification of noncompliance in writing to the certificate holder upon finding deficiencies in the documentation submitted for remote inspection.

(6) Corrections to noncompliant installations. A plumbing installation found to be noncompliant through remote inspection shall be corrected within ten (10) business days upon receiving notice of noncompliance from the department. Failure to make the required corrections may result in the termination of the certificate holder's certificate of completion.

(7) Penalties. A certificate holder who knowingly engages in activity intended to defraud or deceive a plumbing inspector or any

other agent of the department shall be subject to certificate and license revocation or suspension.

(8) Department determinations established in subsections (6) and (7) of this section may be appealed to the department. An appeal shall be conducted pursuant to KRS Chapter 13B.

Section 4[3]. Testing of Systems. (1) The water distribution system, as well as the water service, shall be:

(a) Tested with air or water under a pressure of not less than the maximum working pressure under which it is to be used; and

(b) Free from leaks.

(2)(a) Except as provided in subsection (3) of this section, a water test shall be performed:

1. On the entire soil, waste, and vent system; or
2. In sections.

(b) If it is applied to the entire system, all openings shall be closed, except the highest opening and the system shall be filled with water to the point of overflow.

(c) If the system is tested in sections, each opening shall be tightly plugged, except the highest opening and it shall be tested with not less than a ten (10) foot head of water. In testing successive sections, at least the upper ten (10) feet of the preceding section shall be retested.

(3) In lieu of a water test, an air pressure test may be used by attaching an air compressor or test apparatus to any suitable opening. All other inlets and outlets to the system shall be closed, forcing air into the system until there is a uniform pressure of five (5) pounds per square inch (PSI). The pressure shall be maintained for fifteen (15) minutes.

(4) After the plumbing fixtures have been set and their traps filled with water and before the building is occupied, the final air test shall test the entire soil, waste, and vent system including the fixtures and appurtenances, other than a house sewer, by connecting an air machine to any suitable opening or outlet and applying air pressure equivalent to a one (1) inch water column. It shall be maintained for at least a fifteen (15) minute period. If there are no leaks or forcing of trap seals as may be indicated by the functioning of a drum, float, or water column, the system shall be determined as airtight.

(5) A garage drainage system shall be tested in the same manner as the soil, waste, and vent system.

(6) A house sewer shall be tested by a water, air, or smoke test. A four (4) inch test tee or Y connection shall be provided at the property line for testing.

(7) The department may require the removal of any clean-outs to ascertain if the pressure has reached all parts of the system

(8) A building sewer not drained by gravity shall have a minimum of twenty-four (24) inches of cover and shall be tested with five (5) pounds per square inch for a period of fifteen (15) minutes.

(9) Inside rain water conductors shall be tested with water, air, or smoke test.

Section 5[4]. Defective Work. If an inspection or a test indicates defective work or material, it shall be replaced and the inspection and the test repeated.

Section 6[5]. Testing Defective Plumbing. An air test shall be used in testing the condition of a plumbing system if there is reason to believe it has become defective.

Section 7[6]. Certificate of Approval. The department shall issue a certificate of approval upon the satisfactory completion and final test of the plumbing system.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Plumbing Remote Inspection Seals", Form PLB-4, June 2020; and

(b) "Plumbing Remote Inspection Seal Verification", Form PLB-5, June 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing,

Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at dhbc.ky.gov.

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, March 8, 2021)**

902 KAR 10:131. Repeal of 902 KAR 10:060 and 902 KAR 10:130.

RELATES TO: KRS 13A.310

STATUTORY AUTHORITY: KRS 211.350(5), 211.972

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.350(5) requires that no person, firm, or corporation construct, install, alter, or cause to be constructed, installed, or altered, any on-site sewage disposal system subject to regulation by the cabinet without first obtaining an on-site sewage disposal permit from the local health department. KRS 211.972 requires all persons proposing to engage in the business of servicing or maintaining sewage pretreatment units, grease traps, or holding tanks, or the transporting of sewage sludge from those facilities within the Commonwealth be licensed and bonded. This administrative regulation repeals 902 KAR 10:060 and 902 KAR 10:130 as the fees for on-site sewage disposal permits and septic tank servicing have been added to **902 KAR 10:110 and 902 KAR 10:170[the administrative regulations]** that cover those activities.

Section 1. The following administrative regulations are hereby repealed:

- (1) 902 KAR 10:060, On-site sewage disposal application fee; and
- (2) 902 KAR 10:130, Licensing fee for septic tank servicing.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 23, 2020

FILED WITH LRC: November 2, 2020 at 8:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021, 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 January 15, 2021, 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 January 31, 2021. 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.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Donna Little or Julie Brooks

Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 10:060 and 902 KAR 10:130.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 902 KAR 10:060 as the on-site sewage disposal application fee has been included in the amendment to 902 KAR 10:110; and the repeal of 902 KAR 10:130 is necessary as licensing fees for septic tank servicing have been included in the amendment to 902 KAR 10:170.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 13A.310 by repealing regulations and including the provisions for the application to construct, install, or alter an on-site sewage disposal system in 902 KAR 10:110 and including the licensing of a septic tank servicing business in 902 KAR 10:170.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is in accordance with KRS 13A.310(3).

(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 repeal of 902 KAR 10:060 will impact the local health departments that collect fees for issuing on-site sewage disposal system permits and the Environmental Management Branch of the Department for Public Health that conduct cluster system plan reviews. The repeal of 902 KAR 10:130 impacts 260 licensed septic tank servicing businesses.

(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: 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: No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There are no costs associated with the compliance of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will result in the repeal of obsolete administrative regulations.

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

(a) Initially: There are no costs to the administrative body associated with this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs to the administrative body associated with this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applicable as

this administrative regulation repeals 902 KAR 10:060 and 902 KAR 10:130.

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 repeal of 902 KAR 10:060 and 902 KAR 10:130 impacts the Environmental Management Branch 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 211.350 and 211.972.

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.

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 costs to the administrative body associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs to the administrative body associated with this administrative regulation.

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
(As Amended at ARRS, March 8, 2021)

902 KAR 10:140. On-site sewage disposal system installer certification program standards.

RELATES TO: KRS 211.015, 211.360, 211.375, 211.970[211.350-211.380], 211.990(2)

STATUTORY AUTHORITY: KRS Chapter 13B, 211.350[194.050, 211.090(3), 211.480(3)], 211.357[EO 96-862]

NECESSITY, FUNCTION AND CONFORMITY: KRS 211.350 requires[authorizes] to 211.380 directs the cabinet to regulate the construction, installation, or alteration of on-site sewage disposal systems except for systems with a surface discharge. KRS 211.357 requires[authorizes] directs the cabinet to establish a program of certification for installers of on-site sewage disposal systems. [The purpose of] This administrative regulation establishes the[is to fulfill the requirement to establish a] certification program including competency testing, training, continuing education, and enforcement procedures relative to maintenance of an acceptable standard of competency for installers. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.]

Section 1. Definitions. [As used in this administrative regulation the following terms shall have the meanings set for the below:](1) "Approved" is defined by KRS 211.970(1)[means that which has been considered acceptable to the cabinet].

(2) "Cabinet" is defined by KRS 211.015(1)(a)[means the Cabinet for Health Services and includes its authorized agents].

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(3) "Certification level" means the level of technical skills and knowledge attained by an installer as categorized below:

(a) "Probationary level" means the certification entry level for an installer as specified in KRS 211.357(2) and Section 2(3) of this administrative regulation.~~Installers at this level may possess minimal technical knowledge and require additional training and frequent technical assistance in design and installation procedures; and~~

(b) "Full level" means the certification level attained by an installer as specified in KRS 211.357(2) and Section 2(4) of this administrative regulation;

(c) "Advanced level" means the certification level attained by an installer as specified in Section 2(5) of this administrative regulation; and

(d) "Master level" means the certification level attained by an installer as specified in Section 2(6) of this administrative regulation.~~Installers at this level are expected to possess competency in design and installation of conventional and modified conventional on-site systems but may require additional training and occasional technical assistance for alternative systems or complex designs.~~

(4) "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.360~~[211.357]~~.

(5) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and the certification maintenance requirements contained in this administrative regulation.

(6) "Competency" means an acceptable level of professional conduct, workmanship, and technical knowledge in the design and installation of on-site sewage disposal systems.

(7) "On-site sewage disposal system", "on-site sewage system", or "on-site system" means a complete system installed on a parcel of land, under the control or ownership of any person, ~~that~~which accepts sewage for treatment and ultimate disposal under the surface of the ground, including~~]. The common terms "on-site sewage system" or "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:~~

(a) A conventional system consisting of a sewage pretreatment unit or units~~(unit(s))~~, distribution devices~~(box(es))~~, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit or units~~(unit(s))~~, necessary site modifications, wasteload modifications, and a subsurface soil treatment and dispersal~~(absorption)~~ system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) ~~A cluster system~~systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design; and

(e) A holding tank ~~that~~which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal~~(absorption)~~ system, or connection to a municipal sewer.

(8) "Person" is defined by KRS 211.970(6)~~[means any individual, firm, corporation, association, organization, partnership, business trust, company or governmental unit]~~.

Section 2. Application for Certification. (1) ~~A/No~~ person shall not offer services to construct, install, alter, or repair on-site sewage disposal systems without:

(a) Meeting the application requirement~~(requirements)~~ of this administrative regulation~~(the cabinet for certification)~~; and

(b) Obtaining a valid certification card from the cabinet.

(2) Certification shall be:

(a) Nontransferable from one (1) person to another; and
(b) Valid statewide subject to the provisions of KRS 211.357 and this administrative regulation.

(3)(a) A person~~(Persons)~~ seeking probationary level certification shall:

1. Be of legal age to conduct business in Kentucky;
2. Have sufficient skills and knowledge of administrative regulations and construction techniques to pass a minimum competency examination;

3. Submit a completed DFS-303, Application for Certification or Registration, incorporated by reference in 902 KAR 45:065, to the local health department;

4. Provide proof of liability insurance; and

5. Pay the test registration fee of twenty-five (25) dollars by check or money order made payable to the local health department.

(b) A passing score of at least seventy (70) percent shall~~(must)~~ be achieved on the exam.

(c) An individual~~(Individuals)~~ failing to achieve a passing score may retake the exam by re-registering and submitting another registration fee.

(d) An individual~~(Individuals)~~ who passes~~(pass)~~ the exam shall submit to the cabinet a forty-five (45) dollar certification fee by check or money order made payable to the Kentucky State Treasurer.

(4) A person~~(Persons)~~ seeking full level certification shall:

(a) Have continuously maintained probationary level status in good standing;

(b) Meet the requirements as specified in KRS 211.357(2);

(c) Submit the documentation required in subsection (3)(a)3 and (4) of this section; and

(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(5) A person~~(Persons)~~ seeking advanced level certification shall:

(a) Have continuously maintained full level status in good standing;

(b) Submit the documentation required in subsection (3)(a)3 and (4) of this section;

(c) Complete the necessary training workshops with passing scores on workshop tests to obtain advanced level certification as required by the cabinet; and

(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(6) A person~~(Persons)~~ seeking master level certification shall:

(a) Have continuously maintained advanced level status in good standing;

(b) Submit the documentation required in subsection (3)(a)3 and (4) of this section;

(c) 1. Installed a minimum of two (2) systems as specified in Section 3(4) of this administrative regulation; and

2. Submit written verification of passed inspection from a certified inspector employed by the local health department having jurisdiction; and

(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation~~[Any person proposing to offer services to construct, install, alter or repair on-site sewage disposal systems shall first have met the application requirements of the cabinet for certification and have obtained a valid certificate from the cabinet. Applications shall be made on form DFS-233– Application for Certification to Install On-site Sewage Disposal Systems provided by the cabinet and shall include necessary information about the applicant, and shall be accompanied by an applicable fee as established in KRS 211.357(3).~~

(2) For probationary certification applicant's qualifications shall be as follows:

(a) Applicant shall be a specific individual person of legal age to conduct business in Kentucky;

(b) Applicant shall have sufficient skills and knowledge of regulations and construction techniques to pass a minimum competency examination;

(c) Applicant shall possess or have ready access to use of necessary construction equipment including a backhoe, dump

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truck, hand tools, transit or level and leveling rod; and

(d) Applicant shall submit proof of liability insurance.

(3) Applicant's qualifications for full certification shall be as follows:

(a) As specified in subsection (2)(a) through (d) of this section; and

(b) As specified in KRS 211.357(2)

(4) Applicants meeting the qualifications listed above shall be issued the appropriate certificate by the cabinet.

(5) Certification shall be valid only for the specific individual person to which it was issued and is not transferable to another person. Certification shall remain in effect and be valid statewide subject to the provisions of this regulation and KRS 211.357[.]

Section 3. Certification Level Standards. Certification level standards shall be limited to on-site systems that utilize only the following:

(1) Probationary certification level is limited to residential, on-site systems utilizing:

(a) Gravity distribution;

(b) Rock-filled trenches or beds;

(c) Leaching chamber trenches or beds; or

(d) Evaporation-absorption lagoons.

(2) Full certification level is able to install residential, commercial, industrial, or public facility systems utilizing:

(a) Dosed systems;

(b) Fill and wait systems;

(c) Leaching chambers at grade; or

(d) Constructed wetlands; and

(e) Probationary certification level system listings.

(3) Advanced certification level is able to install residential, commercial, industrial, or public facility systems utilizing:

(a) Low pressure pipe systems;

(b) Mounds;

(c) Drip irrigation;

(d) Advanced treatment;

(e) Experimental technology; or

(f) Cluster systems; and

(g) Probationary and full certification level system listings.

(4) Master certification level is able to install residential, commercial, industrial, or public facility systems utilizing probationary, full, and advanced certification level system listings.

Section 4. Maintenance of Certification. (1) Each person[All persons] holding a valid certification under KRS 211.357 shall be required to:

(a) Attend training workshops offered by the cabinet to maintain certification and improve competency based on the level of certification attained;

(b) Maintain and submit proof of liability insurance annually to the local health department; and

(c) Annually pay the certification fee as required by Section 2(3)(d) of this administrative regulation to the Kentucky Department for Public Health.

(2) An installer whose certification has expired shall:

(a) Comply with subsection (1) of this section;

(b) Submit proof of completion of continuing education units; and

(c) Receive a renewal certification card prior to installing an on-site sewage system.

(3) For all certification levels, [Attendance at] a minimum of two (2) training workshops for a total of six (6) approved continuing education units per year with passing scores on workshop tests shall meet certification maintenance requirements.

(4)[(3)] Attendance at workshops, seminars, or conferences not sponsored by the cabinet may be substituted on a one (1) for one (1) basis to meet certification maintenance requirements at the determination[discretion] of the cabinet. Requests for consideration of other training for substitution shall be based upon the following:

(a) Submission of a copy of the training agenda, speaker or presenter biographies, and course outlines; and

(b) Submission of proof of attendance and results of any

testing or other performance measurement with verification by the training sponsor.

(5)[(4)] Upon receipt of a request for training substitution the cabinet shall compare that training for equivalency with similar training it provides. If equivalency is demonstrated, the cabinet shall accept that training for substitution as specified in subsection (4)[(3)] of this section.

(6)[(5)] Any person failing to meet certification maintenance requirements shall be subject to administration action under Section 7[6] of this administrative regulation and KRS 211.357(4).

Section 5[4]. Training. (1) The cabinet shall develop and implement a series of training workshops for certified installers in the areas of on-site sewage disposal system design, technology, application and function.

(2) Training workshops shall be conducted throughout the state at frequencies, times, and locations necessary to provide all certified installers a reasonable opportunity to attend a number of workshops sufficient to maintain certification.

(3) A schedule of training workshops, including dates, times, location, and topics[, and registration forms] shall be prepared and made available to all certified installers to notify them of training opportunities and allow for scheduling attendance.

(4) A series of training courses shall be developed including instructor and student manuals, and other audiovisual and written materials.

(5) The cabinet may charge a reasonable fee at each training workshop to support program costs.

(6) The cabinet shall establish, through grants or contracts, a training staff composed of local health department fully certified inspectors to conduct training workshops on a regional basis. These local instructors shall serve as supplemental staff to the cabinet and act under the direct supervision of the cabinet.

(7) Training workshops for staff and supplemental staff instructors shall be conducted to assure uniformity of training for certified installers.

(8) The cabinet may contract with other governmental agencies, private consultants, or professional organizations for specialized instructor services.

Section 6[5]. Materials and Equipment. (1) Each training course shall be developed into a training materials packet consisting of the following:

(a) Course outline;[.]

(b) Instructor script;[.]

(c) Trainee guide;[.]

(d) Audiovisual materials;[.]

(e) Trainee worksheets and reference sheets;[.]

(f) Test;[.]

(g) Instructor comment sheet; and[.]

(h) Trainee comment sheet.

(2) A complete training materials packet, in hardcopy or digital format[assembled in a loose-leaf, three (3)-ring binder,] shall be provided to each instructor for each course.

(3) A training material packet, excluding subsection (1)(b), (d) and (g) of this section, shall be provided to each trainee for each course.

(4) [A loose-leaf, three (3)-ring binder shall be provided to each trainee at the first workshop attended. This binder shall be used by the trainee to assemble a reference manual for the first course and all subsequent courses attended.]

(5) Sufficient stocks of instructor and trainee material packets shall be maintained for each course to meet demand.

(6)[(6)] Audiovisual equipment[, including an overhead projector, slide projector, projection screen, videocassette player, and television monitor] shall be available to each instructor.

Section 7[6]. Enforcement. (1) Failure of any certified installer to comply with the requirements of KRS 211.350, 211.357(4) and (5), 902 KAR 10:081, 902 KAR 10:085, or this administrative regulation shall result in administrative action being taken.

(2) A minimum six (6) months probationary period shall be assigned to any certified installer who:

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(a) Fails final inspection on any two (2) consecutive systems ~~that~~[which] require follow-up inspections before approval is granted;

(b) Backfills any system before final inspection is conducted and approval to backfill is given;

(c) Fails final inspection on any system ~~that~~[which] results in reconstruction of the system before approval can be given;

(d) Fails to place, cause to be placed, or fails to supervise placement of any required additional fill soil over an installed system;

(e) Fails to call for final inspection of any system;

(f) Fails to be present on the site anytime work is being performed on the system under construction;

(g) Fails to provide name, certification number, and notification of intent on application of permit when performing excavation and backfilling work on permitted homeowner installations; or

(h) Performs work on any system outside of the designated certification level.

(3) Probation may be assigned to a certified installer by the cabinet or by the certified inspector having local jurisdiction. Terms of the probationary period shall stipulate any restrictions, requirements, or additional training ~~determined~~[deemed] necessary to correct performance.

(4) For other violations, the provisions of KRS 211.357(4) and (5) relating to suspension or revocation of certification shall apply. ~~[In addition, if necessary to correct damaged or abandoned systems or sites, surrender of business bond shall be required.]~~

(5) In all instances of administrative action being taken for probation, suspension or revocation, a certified installer shall have the right to request an administrative ~~conference~~[hearing]. The request shall be submitted in writing on form DFS-212 - Request for Conference, ~~incorporated by reference in 902 KAR 1:400.~~[Hearing] to the local health department having jurisdiction or to the cabinet. All administrative ~~conferences~~[hearings] shall be conducted ~~pursuant to~~[in accordance with] 902 KAR 1:400.

(6) If immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or compel compliance with KRS 211.350(5), (7), (8), ~~and (9)~~ [(2) and (3)], 211.357(4) and (5) or administrative regulations pursuant to those statutes, the cabinet or local health department concerned may maintain, in its own name, injunctive action against any person engaged in the construction, installation, or alteration of an on-site sewage disposal system.

(7) The cabinet shall be notified within two (2) business days~~[in writing]~~ of any administrative action taken by a local health department against any certified installer, so that other local health departments can be alerted to that installer's status.

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, March 8, 2021)

902 KAR 10:150. Domestic septage disposal site approval procedures.

RELATES TO: KRS 211.355, 211.360, 211.970, 211.974, 211.976, 211.981~~[211.982]~~

STATUTORY AUTHORITY: KRS 194A.050(1)~~[Chapter 13B, 211.980, 211.090, EO 96-862]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires~~[authorizes]~~ 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 211.980 requires~~[authorizes]~~ the secretary~~[KRS 211.970 to 211.982 direct the Cabinet for Health Services]~~ to promulgate administrative regulations relating to

approval of domestic septage treatment, land application, and surface disposal sites. This administrative regulation establishes the approval process for domestic septage disposal sites~~[sets forth the procedures for complying with KRS 211.970 to 211.982. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services].~~

Section 1. Definitions. ~~[In addition to the definitions given in KRS 211.970, as used in this administrative regulation, the following terms shall have the meanings set forth below:]~~

(1) "Cabinet" is defined by KRS 211.970(2).

(2) "Certified Inspector" means a specific individual who has met the requirements for certification contained in KRS 211.360.

(3) "Deep incorporation" means land application by subsurface injection, trench disposal, or a furrow-placement-cover operation.

(4)~~[(2)]~~ "Domestic septage" means liquid or solid material removed from a septic tank, holding tank~~[cesspool]~~, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage shall not include:

(a) Liquid or solid material removed from a septic tank that contains commercial wastewater or industrial wastewater processes;

(b) ~~[Cesspool];~~

(e) Similar treatment works that receives commercial or industrial wastewater processes or individual wastewater processes; or

~~(c)~~~~[(d)]~~ Grease removed from a grease trap at a restaurant or similar grease producing business.

(5)~~[(3)]~~ "Grease" is defined by~~[pursuant to]~~ KRS 211.970(3) ~~[and shall not apply to mineral-based oils or greases].~~

(6)~~[(4)]~~ "Land application" means:

(a) The spraying or spreading, while the vehicle is in motion, of domestic septage or domestic septage mixed with grease at a ratio of three (3) parts domestic septage to one (1) part grease onto the land surface;

(b) The injection of domestic septage below the land surface; or

(c) The incorporation of domestic septage into the soil.

(7)~~[(5)]~~ "Operator" means a person operating or owning a domestic septage disposal, treatment, or recycling site, including their authorized agents.

(8)~~[(6)]~~ "Restrictive horizon" means a soil horizon that is relatively impervious to the downward movement of water, grease, domestic septage, or mixture because of its cemented, compacted or structural condition.

(9) "Shallow incorporation" means land application by surface spreading followed by plowing, disking, or harrowing.

(10) "Surface disposal site" means an area of land that is used for domestic septage disposal.

(11) "Tank" is defined by KRS 211.970(12).

(12)~~[(7)]~~ "Water table" means the zone of soil saturation by groundwater.

Section 2. Application for Site Evaluation. (1)~~(a)~~ Form DFS-345, ~~[Application for] and Site Evaluation and Permit to Operate a Disposal Site. ~~[(12/18)]~~~~ incorporated by reference in 902 KAR 10:160~~[(6/94)]~~, shall be submitted by the owner or operator~~[applicant]~~ to the local health department ~~for~~[on] any site that is to be used as a domestic septage disposal site.

~~(b)~~~~[Form DFS-345, "Application and Site Evaluation", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.]~~ A farm that properly disposes ~~of~~[receives] less than 2,000 gallons of its own domestic septage per year shall not be required to be permitted.~~[however]~~ The farm shall be registered with the local health department.

(2) The disposal area where domestic septage is to be applied shall meet the requirements in Section 4 of this administrative regulation.

(3)~~[(2)]~~ The following documents shall accompany the application:

(a) A plat or recording in the local county clerk's office, an original and current 7.5 minute U. S. Geological Survey Quadrangle

topographical map with proposed site boundaries clearly marked, or dimensioned site plan showing:

1. Number of acres and site boundaries;
2. Structures and other facilities;
3. Proposed disposal area;
4. Setback distances for features on the site and adjacent to the site as listed in Section 4, Table 8, of this administrative regulation;
5. North and prevailing wind direction; and
6. Access roads and other features outside of the boundaries of the site that may have an impact on site approval.

(b) Proposed operations plan including:

1. Methods and equipment for application, treatment, recycling, or storage;
2. Land usage and the nitrogen requirement for the crop or vegetation;
3. Application rate;
4. Monitoring program for vector and pathogen reduction;
5. State and federal endangered species impact statement, if applicable; and
6. Other information determined as[deemed] necessary by the cabinet.

Section 3. Site Evaluation Fee. (1) An evaluation fee shall be required for the cost of conducting a site evaluation by the local health department.

(2) In accordance with KRS 211.355, the site evaluation fee shall be established by the local board of health having jurisdiction.

(a) Fifty (50) dollars per proposed disposal site that contains five (5) acres or less;

(b) \$100 per sites greater than five (5) acres but less than twenty-five (25) acres;

(c) \$150 per sites greater than twenty-five (25) acres but less than fifty (50) acres;

(d) \$200 per sites greater than fifty (50) acres but less than 100 acres; and

(e) \$300 per sites greater than 100 acres;

(2) Fee shall be made payable to the local health department.]

Section 4. Site Approval Procedures. (1) A certified inspector shall evaluate each proposed site based on the factors listed in Tables 1 through 8 of this section. An official site evaluation form shall be completed classifying each factor using the following rating method:

(a) An "A" rating means that the site is acceptable for that site factor.

(b) An "M" rating means the site factor is acceptable with modification or restriction to the site or disposal method.

1. M₁ - Upslope surface water diversion required.

2. M₂ - Shallow placement of domestic septage shall maintain a minimum separation distance of eighteen (18) inches between the domestic septage and a water table or bedrock. Lined wetland cells, storage, or treatment facilities may be excluded from this requirement;

3. M₃ - Shallow placement of domestic septage shall be required to maintain a minimum separation distance of eighteen (18) inches between the domestic septage and a restrictive horizon.

4. M₄ - Acceptable if a curtain drain is installed to lower the water table to a level of eighteen (18) inches below the domestic septage application.

(c) A "U" rating means the site factor is not acceptable. Reclamation site areas with "U" ratings may be acceptable for disposal sites if the disposal activity will not contaminate the groundwater or create a public health nuisance.

(2) Topography.

TABLE 1 - SITE TOPOGRAPHY

Disposal Method	Slope 0 to 12%	Slopes >12% to 25%	Slopes >25% or complex[nonuniform]
Surface Application	A	U	U
Shallow Incorporation	A	U	U
Deep Incorporation	A	M	U

(3) Landscape position.

TABLE 2 - LANDSCAPE POSITION

Disposal Method	Flat Or Convex: Ridgetop; Natural Terraces; Shoulder Slope; Sideslope ; Footslope s; Terraces	Concave: Shoulder Slope; Sideslope	Concave: Ridgetops; Terraces; Footslopes; Toeslopes; Sinkholes; Karst Depressions; Floodplains
Surface Application	A	M ₁	U
Shallow Incorporation	A	M ₁	U
Deep Incorporation	A	M ₁	U

(4) Soil texture. Soil texture shall be classified as follows:

(a) Soil Group I. Sandy texture soils containing more than the seventy (70) percent sand-sized particles including the sand and loamy sand soil textural classes;

(b) Soil Group II. Coarse loamy texture soils containing more than thirty (30) percent clay-sized particles including sandy loam and loam soil texture classes;

(c) Soil Group III. Fine loamy soils containing less than forty (40) percent clay-sized particles and not more than thirty (30) percent sand-sized particles including sandy clay loam, silt loam, clay loam, and silty lay loam textural classes; and

(d) Soil Group IV. Clay texture soils containing forty (40) percent or more clay-sized particles including sandy clay, silty clay, and clay.

TABLE 3 - SOIL TEXTURAL GROUP

Disposal Method	Soil Textural Group I	Soil Textural Group II & III[+& -]	Soil Textural Group IV[+]
Surface Application	U	A	A
Shallow Incorporation	U	A	A
Deep Incorporation	U	A	A

(5) Depth to a restrictive horizon.

TABLE 4 - DEPTH TO RESTRICTIVE HORIZON

Disposal Method	Restrictive Horizon < 18"	Restrictive Horizon From 18" To 24"	Restrictive Horizon From 24" To 42"	Restrictive Horizon > 42"
Surface Application	U	A	A	A
Shallow Incorporation	U	M ₃	M ₃	A

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Deep Incorporation	U	U	M ₃	A
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(6) Depth to a water table.

Disposal Method	Water Table Depth < 18"	Water Table Depth From 18" To 24"	Water Table Depth From 24" To 42"	Water Table Depth > 42"
Surface Application	M _{2,4}	A	A	A
Shallow Incorporation	M _{2,4}	M _{2,4}	M _{2,4}	M _{2,4}
Deep Incorporation	M _{2,4}	M _{2,4}	M _{2,4}	M _{2,4}

(7) Soil depth.

Disposal Method	Soil Depth <18"	Soil Depth 18" To 24"	Soil Depth 24" To 42"	Soil Depth > 42"
Surface Application	U	A	A	A
Shallow Incorporation	U	M ₂	M ₂	M ₂
Deep Incorporation	U	U	M ₂	M ₂

(8) Available space. The disposal site area shall be a minimum of one (1) acre (43,560 sq. ft.) after application of the setback distance requirements.

Disposal Method	One Year Disposal Capacity	Less Than One Year Disposal Capacity
Surface Application	A	U
Shallow Incorporation	A	U
Deep Incorporation	A	U

Site Features	Surface Application; Experimental Disposal Methods	Shallow Incorporation	Deep Incorporation
Potable Water Supplies And Wells	500 Feet	300 Feet	300 Feet
Lakes, Ponds, Streams, Intermittent Water Ways Downslope	200 Feet	100 Feet	100 Feet
Sinkholes, Karst, Depressions	200 Feet	200 Feet	200 Feet
Dwellings, Business, Beaches, Public Gatherings	600 Feet	500 Feet	300 Feet

Property Line Or Easements	100 Feet	50 Feet	50 Feet
Public Roads	200 Feet	200 Feet	100 Feet

(9) Backhoe pits or a soil probe truck shall be used to determine soil characteristics and as necessary, soil samples shall be randomly spaced and taken to a depth of forty-two (42) inches unless limited by site conditions. The owner or operator[applicant] shall provide the backhoe or soil probe truck.

Section 5. Appeal Procedures. (1) An administrative conference[A hearing] shall be provided, pursuant to[in accordance with] 902 KAR 1:400, at the request of the owner or operator[applicant] if a site has been disapproved.

(2) The request for an administrative conference[a hearing] shall be made in writing on Form DFS-212, Request for Conference, incorporated by reference in 902 KAR 1:400["Request for Hearing" (1/91), to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-212, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(3) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. Service of process and proof of service shall comply with KRS 211.220].

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.

CABINET FOR HEALTH AND FAMILY SERVICES
 Department for Public Health
 Division of Public Health Protection and Safety
 (As Amended at ARRS, March 8, 2021)

902 KAR 10:160. Domestic septage disposal site operation.

RELATES TO: KRS 211.220, 211.360, 211.970, 211.972, 211.974, 211.976, 211.981, 211.995[211.982]

STATUTORY AUTHORITY: KRS 194A.050(1)[Chapter 13B], 211.980, [211.090, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.980 authorizes the secretary[KRS 211.970 to 211.982 direct the Cabinet for Health Services] to promulgate administrative regulations relating to vehicle tank and equipment requirements; conduct of business; [approval of domestic septage treatment and disposal methods;] approval of disposal or treatment sites and methods; domestic septage treatment, land application, and surface disposal sites; inspection and administrative enforcement procedures, including suspension or revocation of licensing; injunctive action; and any other matters deemed necessary to protect public health and the environment. This administrative regulation establishes the requirements for issuing a permit to operate a domestic septage storage or disposal site, [sets forth] the procedures for operating a domestic septage storage or disposal site, and the inspection process of treatment or disposal sites[complying with KRS 211.970 to 211.982. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services].

Section 1. Definitions. [In addition to the definitions given in KRS 211.970, as used in this administrative regulation, the following terms shall have the meanings set forth below:]

(1) "Cabinet" is defined by KRS 211.970(2).

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(2) "Certified inspector" means a specific individual who has met the requirements for certification contained in KRS 211.360.

(3)(2) "Deep incorporation" means land application by subsurface injection, trench disposal, or a furrow-placement-cover operation.

(4)(3) "Domestic septage" means liquid or solid material removed from a septic tank, holding tank, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage shall not include:

(a) Liquid or solid material removed from a septic tank that contains commercial wastewater or industrial wastewater processes;

(b) ~~Cesspool~~;

(c) Similar treatment works that receives commercial or industrial wastewater processes ~~or individual wastewater processes~~; or

(4) Grease removed from a grease trap at a restaurant or similar grease producing business.

(5)(4) "Grease" is defined by ~~pursuant to~~ KRS 211.970(3) ~~and shall not apply to mineral-based oils or greases~~.

(6)(5) "Land application" means:

(a) The spraying or spreading, while the vehicle is in motion, of domestic septage mixed with grease at a ratio of three (3) parts domestic septage to one (1) part grease onto the land surface;

(b) The injection of domestic septage below the land surface; or

(c) The incorporation of domestic septage into the soil.

(7)(6) "Operator" means a person owning, operating, or controlling a septic tank domestic septage servicing business or a person operating or owning a domestic septage disposal, treatment, or recycling site, including their employees or agents.

(8) "pH" means the logarithm of the reciprocal of the hydrogen ion concentration.

(9) "Reclamation" means the approved reclaiming of strip mine and construction sites for the disposal of domestic septage.

(10)(7) "Shallow incorporation" means land application by surface spreading followed by plowing, disking, or harrowing.

(11) "Surface disposal site" means an area of land that is used for domestic septage disposal.

Section 2. Application for Permit to Operate. (1)(a) ~~A~~ No person shall not construct or operate a site for domestic septage disposal or domestic septage mixed with grease at a ratio of three (3) parts domestic septage to one (1) part grease without having first obtained a permit from the cabinet.

(b) ~~Nothing in this administrative regulation shall require~~ A farm owner shall not be required to be permitted as a disposal site if that farm properly disposes of ~~receives~~ less than 2,000 gallons of its own domestic septage per year. ~~However,~~ The farm shall be registered with the local health department and the disposal of its own domestic septage on the farm shall not contaminate the groundwater or surface water or create a public health nuisance.

(2) Form DFS-200, Application for Permit or License, incorporated by reference in 902 KAR 45:065, and form DFS-345, Application for Site Evaluation and Permit to Operate a Disposal Site, (12/18), "Application for Permit to Operate" (8/88), shall be submitted to the local health department for the initial application. ~~Form DFS-233 (10/87) "Application for Permit" shall be submitted to the local health department annually for permit renewal. Form DFS-234 (12/92) "Permit to Operate" shall be posted in a conspicuous place at the disposal site. Forms DFS-200, "Application for Permit to Operate"; DFS-233, "Application for Permit"; and DFS-234 (12/92), "Permit to Operate" are incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.~~

(3) The disposal area where domestic septage is to be applied shall meet the requirements of 902 KAR 10:150.

(4) The following documents shall be submitted with ~~accompany~~ the initial application or any time changes to the operation or process occur:

(a) A plat or recording in the local county clerk's office, an original and current 7.5 minute U.S. Geological Survey Quadrangle topographical map with proposed site boundaries clearly marked, or dimensioned site plan showing:

1. Number of acres and site boundaries;
2. Structures and other facilities;
3. Approved disposal area;
4. Setback distances of features on and adjacent to the site;
5. North and prevailing wind direction; and
6. Access roads and other features outside of the boundaries of the site.

(b) Proposed operations plan including:

1. Methods and equipment for application or storage;
2. Land usage and the nitrogen requirement for the crop or vegetation;
3. Application rate; and
4. Pathogen reduction and vector control plan. ~~and~~

(5)(a) ~~A~~ certification statement shall be submitted to the local health department certified inspector with the initial permit application and annually thereafter.

(b) This statement shall read ~~stating~~: "I certify, under penalty of law, that pathogen reduction and the vector attraction reduction requirements have been met, and no changes to the operation or process, as submitted in the original application, have occurred as per 902 KAR 10:150. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the requirements have been met."

(6)(4) A permit to operate shall be issued after the owner or operator ~~applicant~~ meets the requirements of this administrative regulation and 902 KAR 10:150.

(7)(5) The permit shall expire March 1 of each year.

Section 3. Permit and Inspection Fees. (1) An annual permit fee of ~~\$187~~ 1450 is assessed for each permitted site to cover the costs of reviewing documentation and conducting inspections by the local health department.

(2) Fees shall be made payable to the local health department.

Section 4. Business Requirements. (1) The operator of a domestic septage disposal site shall:

(a) Refuse to accept any type of waste for which the site is not approved.

(b) Maintain the site, facilities, and equipment in a safe and sanitary condition.

(c) Direct and manage the unloading and application of domestic septage to the site during the hours of operation.

(d) Notify service vehicle operators if the site is closed during normal working hours.

(e) Notify the local health department certified inspector immediately of any person who discharges prohibited waste.

(f) Submit a written closure plan to the local health department prior to thirty (30) days of closure.

(2) The owner of a disposal site shall:

(a) Provide written notification to the subsequent owner prior to the sale that the land was used as a domestic septage disposal site.

(b) Maintain a list of the vehicle license numbers, disposal method, location, and total number of gallons of domestic septage or domestic septage mixed with grease received, retain these records for five (5) years, and make these records available to the cabinet during normal business hours.

Section 5. Approved Methods of Domestic Septage Disposal. (1) Domestic septage storage facilities capable of holding three (3) times the storage capacity of the largest pump truck, or at least 4,000 gallons, shall be provided at the disposal site.

(2) Unless previously added, sufficient alkali shall be applied to each application method of domestic septage or domestic septage mixed with grease to raise the pH to twelve (12) for thirty (30) minutes to control odors and vectors.

(3) Surface application and shallow incorporation.

(a) Equipment used for surface application shall have a spray bar, splash plate, or other device to evenly distribute the domestic septage while the equipment is in motion. The device shall be:

1. Designed to direct the contents away from the vehicle; and
2. ~~shall be~~ Rinsed prior to it leaving the site.

(b) The domestic septage shall be surface spread uniformly to

prevent ponding.

(c) ~~Domestic septage storage facilities shall be provided during periods of inclement weather.~~

(d) The site shall have a well-established and maintained sod covering or approved vegetation unless the domestic septage application is used to establish a vegetative cover in reclamation.

~~(d)(e) Sufficient alkali shall be applied to each surface application of domestic septage or domestic septage mixed with grease to raise the pH to twelve (12) for thirty (30) minutes to control odor and vectors, unless previously added.~~

(f) Domestic septage on sites using shallow incorporation shall be incorporated into the soil within six (6) hours.

~~(e)(g) Incorporation of domestic septage shall follow the contour of the site to minimize erosion and runoff.~~

~~(4)(2) Deep incorporation.~~

(a) Deep incorporation of domestic septage shall follow the contour of the site to minimize soil erosion and runoff.

(b) If approved, trenches shall be a maximum of two (2) feet deep and two (2) to ten (10) feet wide. Actual configuration of the width and linear dimensions may be restricted by topography and soil conditions.

1. The excavated soil from the trench or bed shall be placed on the uphill side to control the movement of surface water into the trench or bed.

2. ~~An additional application of alkali may be required~~[Sufficient alkali shall be spread over each application of domestic septage placed in a trench to control odor and vectors].

3. The trench shall be covered with a minimum of one (1) foot of soil when it reaches its holding capacity and has dewatered sufficiently.

4. Trenching of grease alone is prohibited.

Section 6. Experimental Disposal Methods. The following disposal methods shall be considered experimental and, if it is determined that they are likely to have an adverse environmental impact, the cabinet shall submit the application for review by the Natural Resources and Environmental Protection Cabinet:

- (1) Lagoon ~~[pretreatment]~~;
- (2) Wetlands ~~[pretreatment]~~;
- (3) ~~Lagoon/Wetlands~~;
- (4) In-vessel composting;
- ~~(4)(5) Static pile composting;~~
- ~~(5)(6) Windrow composting;~~
- ~~(6)(7) Recycling; and~~
- ~~(7)(8) Other, similar proposed methods [not specified by this administrative regulation].~~

Section 7. ~~[Disposal Restrictions. The following restrictions shall apply to all land disposal methods if alkali is not added to the domestic septage:~~

~~(1) Public access to the site shall be restricted for at least twelve (12) months.~~

~~(2) Grazing of animals whose products are consumed by humans shall be prohibited for one (1) month after application.~~

~~(3) If crops for direct human consumption are grown within eighteen (18) months of the last domestic septage application, and the edible portion of the crop is in contact with the domestic septage, any domestic septage applied to the land or incorporated into the soil shall be treated by a process to further reduce pathogens (PFRP) using one (1) the following technologies:~~

~~(a) Composting. Using the within-vessel composting method or the static aerated pile composting method, the temperature of the domestic septage shall be maintained at 131 degrees Fahrenheit or greater for three (3) days. Using the windrow composting method, the temperature of the domestic septage shall be maintained at 131 degrees Fahrenheit or greater for fifteen (15) days or longer. During the period when the compost is maintained at 131 degrees Fahrenheit or greater, there shall be a minimum of five (5) turnings of the windrow.~~

~~(b) Heat drying. Domestic septage shall be dried by direct or indirect contact with hot gases to reduce the moisture content of the domestic septage to ten (10) percent or lower. The temperature of~~

~~the domestic septage particles shall exceed 176 degrees Fahrenheit or the wet bulb temperature of the gas in contact with the domestic septage as the domestic septage leaves the dryer shall exceed 176 degrees Fahrenheit.~~

~~(c) Heat treatment. Liquid domestic septage shall be heated to a temperature of 356 degrees Fahrenheit or greater for thirty (30) minutes.~~

~~(d) Thermophilic aerobic digestion. Liquid domestic septage shall be agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the domestic septage is ten (10) days at 131 to 140 degrees Fahrenheit.~~

~~(e) Beta ray irradiation. Domestic septage shall be irradiated with beta rays from an accelerator at dosages of at least one (1.0) megarad at room temperature (ca. sixty-eight (68) degrees Fahrenheit).~~

~~(f) Gamma ray irradiation. Domestic septage shall be irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at room temperature (ca. sixty-eight (68) degrees Fahrenheit).~~

~~(g) Pasteurization. The temperature of the domestic septage shall be maintained at 158 degrees Fahrenheit or greater for thirty (30) minutes or longer.~~

~~(h) Other methods or operating conditions may be acceptable if pathogens are reduced equivalent to any of the above add-on methods.~~

~~(4) The annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate calculated using the following equation:~~

$$AAR = \frac{N}{365}$$

Where:

AAR = Annual application rate in gallons per acre per 365-day period.

N = Amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

~~Section 8.] Domestic Septage Disposal Site Maintenance. (1) Sites shall be maintained to prevent the creation of a public health hazard or degrading conditions to the environment.~~

~~(2) The DFS-234, Permit to Operate (12/18), shall be posted at the entrance of the disposal site.~~

~~(3) A plot plan shall be posted at the site showing the following information:~~

~~(a) Division of site by approved application methods; and~~

~~(b) Number of gallons of domestic septage applied.~~

~~(4)(3) Access roads shall be maintained to minimize dust and rutting.~~

~~(5)(4) Surface application shall not be applied during or immediately after inclement weather or a hard freeze.~~

~~(6)(5) Warning signs, fencing, or barriers shall[may] be required to prevent unauthorized entry into the disposal area.~~

~~Section 8.] Existing Domestic Septage Disposal Sites. (1) Domestic septage disposal sites existing prior to the effective date of this administrative regulation may continue to operate if the cabinet determines that the site and disposal methods do not create a health or safety hazard. The determination shall be made after a site evaluation and physical inspection by the cabinet of the existing site. Results of the determination shall be made in writing to the site owner. The site owner shall obtain a permit to operate using Form DFS-200 as required in Section 2 of this administrative regulation within thirty (30) days of the effective date of this administrative regulation.~~

~~(2) Vehicles, tanks, equipment, and facilities in use at the disposal site prior to the effective date of this administrative regulation, which do not meet the design, construction, or material requirements of this administrative regulation, may continue to be used if in good repair and maintained in a safe and sanitary condition. The determination shall be made after a physical inspection by the cabinet of the vehicles, tanks, equipment, and facilities. Results of the determination shall be made in writing to the owner.~~

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(3) Replacement of existing vehicles, tanks, equipment, and facilities shall meet the requirements of this administrative regulation. The owner shall notify the cabinet of any replacement.

Section 10.] Inspection Procedures. (1) At least one (1) time every calendar year the local health department certified inspector [cabinet] shall inspect:

- (a) Vehicles;
- (b) Equipment;
- (c) Domestic septage storage facilities used at the site; and
- (d) The domestic septage disposal site.

(2) The cabinet shall have the right of access to inspect vehicles, equipment, domestic septage storage locations, and the domestic septage disposal sites during normal hours of operation. The right of access at all times shall not be denied if there is [in the event of] a potential imminent health hazard.

(3) The findings shall be recorded on Form DFS-315, ["Inspection Report, (1/19)"] ["(11/92)"], and a copy of the inspection report shall be provided to the owner or operator. [Form DFS-315, "Inspection Report", is incorporated by reference, and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.]

(4) If a violation is found, the inspection report shall:

- (a) Set forth the specific violation;
- (b) Set a time period for correcting the violation; and

(c) State that failure to comply with any notice issued pursuant to KRS 211.970 to 211.981 [244.982] and this administrative regulation may result in initiation of the enforcement proceedings in Section 9[44] of this administrative regulation and KRS 211.995.

Section 9[44]. Administrative Enforcement Procedures. (1) A permit may be suspended or revoked upon evidence that the operator:

- (a) Knowingly violates the provisions of KRS 211.970 to 211.981 [244.980] or this administrative regulation;
- (b) Accepts prohibited wastes;
- (c) Practices fraud or deception in applying for a permit;
- (d) Fails to pay required fees;
- (e) Is incompetent to operate a domestic septage disposal site;

or

(f) Interferes with the cabinet in the performance of its duties.

(2) An administrative conference [A hearing] shall be provided, after request by the operator, if:

- (a) A permit is denied, suspended, or revoked; or
- (b) An inspection indicates failure to comply with the requirements of KRS 211.970 to 211.981 [244.982] or this administrative regulation.

(3) The request for an administrative conference [a hearing] shall be made in writing on Form DFS-212, Request for Conference, incorporated by reference in 902 KAR 1:400.

(4) ["Request for Hearing" (1/91), to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-212, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(4) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.] Service of process and proof of service shall comply with KRS 211.220.

(5) An injunction may be obtained by the cabinet or local health department if immediate action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or to compel compliance with KRS 211.970 to 211.981 [244.982] and this administrative regulation.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DFS-234, Permit to Operate a Disposal Site", (12/18);

(b) "DFS-315, Inspection Report", (1/19); and

(c) "DFS-345, Application for Site Evaluation and Permit to Operate a Disposal Site", (12/18).

(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.

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.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (As Amended at ARRS, March 8, 2021)

902 KAR 10:170. Septic tank servicing.

RELATES TO: KRS [494A.050.] 211.970, 211.972, 211.974, 211.978, 211.979, 211.981, 211.995 [244.982]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.976, 211.978, 211.979 [Chapter 13B], 211.980, 244.090, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.980 authorizes the secretary [KRS 211.970 to 211.982 direct the Cabinet for Health Services] to promulgate administrative regulations relating to vehicle tank and equipment requirements; conduct of business; approval of disposal or treatment sites and methods; inspection and administrative enforcement procedures, including suspension or revocation of licensing; injunctive action; and any other matters deemed necessary to protect public health and the environment. This administrative regulation establishes the requirements for a septic tank service operator, the disposal of grease, vehicle, tank and equipment operations; licensing; inspection procedures; and enforcement actions [sets forth the procedures for complying with KRS 211.970 to 211.982. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services].

Section 1. Definitions. [In addition to the definitions given in KRS 211.970, as used in this administrative regulation, the following terms shall have the meanings set forth below.]

(1) "Cabinet" is defined by KRS 211.970(2) ["Agricultural land" means land on which a food crop, feed crop, or fiber crop is grown such as range land, pasture land or farms].

(2) "Domestic septage" means liquid or solid material removed from a septic tank, holding tank [cesspool], portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage shall not include:

(a) Liquid or solid material removed from a septic tank that contains commercial wastewater or industrial wastewater processes;

(b) [Cesspool];

(c) Similar treatment works that receives commercial or industrial wastewater processes or individual wastewater processes; or

(c) [(d)] Grease removed from a grease trap at a restaurant or similar grease producing business.

(3) "Domestic sewage" means waste and wastewater from humans or household operations that is discharged to, or otherwise enters a wastewater treatment works.

(4) "Grease" is defined by [pursuant to] KRS 211.970(3) [and shall not apply to mineral-based oils or greases].

(5) ["Land with a high potential for public exposure" means land that the public uses frequently such as construction sites located in a city, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

(6) "Land with a low potential for public exposure" means land that the public infrequently uses or is in contact with such as agricultural land, forest, and a reclamation site located in an unpopulated area.

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(7) "Operator" means a person owning, operating, or controlling a septic tank servicing business, including their employees or agents.

(6) "~~Pathogen~~"(8) "~~Pathogens~~" means disease-causing organisms.

(7) "Site" is defined by KRS 211.970(11).

(8) "Tank" is defined by KRS 211.970(12)[such as certain bacteria, protozoa, viruses, and viable helminth ova].

(9) [~~pH~~] means the logarithm of the reciprocal of the hydrogen ion concentration.

(10) "~~Reclamation site~~" means ~~drastically disturbed land that is reclaimed using domestic septage as in strip mine and construction sites.~~

(11) "Vector attraction" means the characteristics of domestic septage that attract rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.[

(12) "~~Surface disposal site~~" means ~~an area of land that is used for domestic septage disposal.~~

Section 2. Licensing and Fees for Septic Tank Servicing. (1) An annual application for a business license to service or maintain septic tanks, holding tanks, seepage pits, portable toilets, Type III marine sanitation devices, or similar treatment works that receive domestic sewage, grease traps, or domestic septage mixed with grease, shall be:

(a) Submitted to the cabinet on DFS-306 Application for a License (1/19); and

(b) Accompanied by:

1. A business license fee of \$150;~~f.1~~ and

2. A vehicle license fee of fifty (50) dollars for each vehicle; and

(c) Accompanied by a surety bond in the amount of \$5,000.

(2) The business license fee established in subparagraph (1)(b)1. of this section shall be paid by check or money order made payable to the Kentucky State Treasurer and mailed to the Kentucky Department for Public Health, 275 East Main Street, Mailstop HS1C-D, Frankfort, Kentucky 40621.

(3) The vehicle license fee established in subparagraph (1)(b)2. of this section shall be made payable to the local health department having jurisdiction.

(4) Applications shall be made to the cabinet prior to March 1 of each year.

(5) A late renewal fee \$100 shall be assessed on all annual license renewal applications not received by April 1 each year.

Section 3. Conduct of Business. A septic tank service operator shall:

(1) Not dispose of domestic septage or domestic septage mixed with grease unless approved by the cabinet at a permitted site, treatment facility, or registered farm that properly disposes[receives] less than 2,000 gallons of its own domestic septage per year.

(2) Register a farm that properly disposes[receives] less than 2,000 gallons of its own domestic septage or domestic septage mixed with grease per year with the local health department.

(3) Not apply additional domestic septage or domestic septage mixed with grease to any disposal site if the annual application rate has been reached during a 365-day period.

(4) Verify in writing that the vector attraction reduction and pathogen reduction requirements have been met if disposing of domestic septage or domestic septage mixed with grease.

(5) Maintain setback distances from features as required in 902 KAR 10:150, Section 4 (8), Table 8.

(6) Not dispose of domestic septage or domestic septage mixed with grease during adverse weather or if the site is snow covered or frozen.

(7) Provide an adequate storage facility capable of holding three (3) times the storage capacity of the largest pump truck, during adverse weather, wet site conditions, or if the disposal site is not accessible.

(8) Maintain written authorization from the land owner or facility operator to use the site to dispose of domestic septage or domestic septage mixed with grease. The authorization shall be maintained in each licensed vehicle and at the business office.

(9) Remove all domestic septage from the tank being serviced.

(10) Not use chemicals or biological cleaners, starters, or other

agents as part of the service unless the material has been approved by the cabinet. An additive may be approved if it can be demonstrated that the product has a positive benefit and no adverse effect on the operation and performance of an on-site sewage disposal system.

(11) Re-cover access openings and leave the property in a safe and sanitary condition.

(12) Notify the owner of any damage to the sewage treatment or disposal system found during the servicing operation.

(13) Provide the customer an invoice containing the following minimum information:

(a) Customer's name;

(b) Location of service;

(c) Date of service;

(d) Amount of domestic septage and grease from grease traps removed in gallons;

(e) Vehicle license number;

(f) Name and address of servicing business;

(g) Printed and signed name of individual vehicle operator; and

(h) Name and location of approved disposal site, registered farm, landfill, or treatment facility.

(14) Retain copies of customer invoices and other records pertaining to the business operation for five (5) years and make available upon request by the cabinet during normal business hours.

(15) Maintain the following information if domestic septage or domestic septage mixed with grease has been applied to an approved site:

(a) Location by street address, descriptive location, or latitude and longitude of each site where domestic septage or domestic septage mixed with grease has been applied;

(b) The number of acres in each site;

(c) The date and time of application of the domestic septage or domestic septage mixed with grease;

(d) [~~The nitrogen requirement for the crop or vegetation grown on the site during the 365-day period;~~

(e)] Application rate, in gallons, per acre per 365-day period of domestic septage or domestic septage mixed with grease;

(e)[(f)] The following certification statement: "I certify, under penalty of law, that the pathogen reduction and vector attraction reduction requirements have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and vector attraction reduction requirements have been met."
(f) [~~I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.~~;

(g)] A description of how the pathogen and vector attraction reduction requirements have been met; and

(g)[(h)] Name and location of wastewater treatment facility or landfill used to dispose of the domestic septage or domestic septage mixed with grease.

(16) Submit [~~plans and~~] a statement of compliance in accordance with KRS 211.979[211.970] and this administrative regulation prior to transportation or disposal of domestic septage or domestic septage mixed with grease within the borders of the Commonwealth.

(17) Provide employees with necessary personal protective equipment suitable for the work being performed, such as gloves, clothing, and respiratory masks.

Section 4[3]. Grease Disposal. (1) Grease traps serviced at restaurants, residential, or institutional food preparation may be mixed at a ratio of three (3) parts domestic septage to one (1) part grease and disposed at approved disposal sites.

(2) Grease alone may be discharged into a publicly owned wastewater treatment works that will accept grease pumpings.

(3) Grease may be dewatered and disposed at a landfill that will accept grease pumpings.

(4) Grease alone shall not be land applied.

Section 5[4]. Vehicle, Tank, and Equipment Requirements. (1) All vehicles, tanks, towable tank trailers, and equipment used in the

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pumping, transporting, treatment, or disposal of domestic septage or grease traps shall be maintained in safe and sanitary condition.

(2) Tanks used in the pumping or transporting of domestic septage shall meet the following additional requirements:

(a) Tanks shall be leak-proof, constructed of, or coated with, a corrosion resistant material, and securely attached to the vehicle chassis;

(b) Discharge openings shall be constructed so the tank completely drains and the discharge stream is not obstructed by any part of the vehicle or equipment, except for splash plates, spray bars, or similar devices; and

(c) Valves at the tank inlet and outlet shall be water-tight and fitted with caps or plugs for use during transport or storage.

(3) Pumps, valves, and hoses shall be maintained to prevent leakage and meet the following requirements:

(a) Pumps shall be self-priming and;

(b) Pump shall be maintained to prevent backflow;

(c) Connections or openings shall be water-tight and fitted with caps or plugs when the pumping system is not in use;

(d) Pulleys, chains, belts, or flexible shafts shall have guards to prevent injury; and

(e) Hoses shall have leak-proof connectors, caps, or plugs unless stored in leak-proof compartments.

(4) The license for each vehicle shall be visible in accordance with KRS 211.978(2).

(5) The vehicle license number shall be nontransferable from one vehicle to another.

~~Section 5. Existing Vehicles, Tanks, and Equipment. (1) Any vehicle, tank, or equipment in use prior to the effective date of this administrative regulation, which does not meet the design, construction, or material requirements in Section 3 of this administrative regulation, may continue to be used if in good repair and maintained in a safe and sanitary condition as determined by the cabinet.~~

~~(2) Replacement of existing vehicles, tanks, and equipment after the effective date of this administrative regulation shall meet the requirements of this administrative regulation.]~~

Section 6. Inspection Procedures. (1) At least one (1) time every calendar year the cabinet shall inspect:

(a) Vehicles;

(b) Equipment; and

(c) The domestic septage storage locations.

(2) The cabinet shall have the right of access to inspect vehicles, equipment, and domestic septage storage locations during normal hours of operation. The right of access shall not be denied if there is an imminent health hazard.

(3) The findings shall be recorded on form DFS-315, ["Inspection Report, (1/19), incorporated by reference in 902 KAR 10:160, (9/93)], and a copy of the inspection report shall be provided to the owner or operator. [Form DFS-315, "Inspection Report", is incorporated by reference, and may be viewed or obtained at the Office of the Commissioner for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.]

(4) If a violation is found, the inspection report shall:

(a) Set forth the specific violation;

(b) Set a time period for correcting the violation; and

(c) State that failure to comply with any notice issued pursuant to KRS 211.970 to 211.981[244.982] and this administrative regulation may result in initiation of the enforcement proceedings in Section 7 of this administrative regulation and KRS 211.995.

Section 7. Administrative Enforcement Procedures. (1) A license may be suspended or revoked if the operator:

(a) Knowingly Violates the provisions of KRS 211.970 to 211.981[244.980] or this administrative regulation;

(b) Practices fraud or deception in applying for a license;

(c) Fails to pay required fees or maintain bonding requirements; or

(d) Interferes with the cabinet in the performance of its duties.

(2) An administrative conference[A hearing] shall be provided,

after request by the operator, if:

(a) A license is denied, suspended, or revoked; or

(b) An inspection indicates repeated violations or failure to comply with the requirements of KRS 211.970 to 211.981[244.982] or this administrative regulation.

(3) The request for an administrative conference[a hearing] shall be made in writing on Form DFS-212, Request for Conference, incorporated by reference in 902 KAR 1:400.

~~(4) "Request for Hearing" (1/91), to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-212, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.~~

~~(4) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. Service of process and proof of service shall comply with KRS 211.220.~~

~~(5) An injunction may be obtained by the cabinet or local health department if immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or to compel compliance with KRS 211.970 to 211.981[244.982] or this administrative regulation.~~

Section 8. Incorporation by Reference. (1) The "DFS-306, Application for a License", (1/19) is incorporated by reference.

(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.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, March 8, 2021)**

902 KAR 20:160. Chemical dependency treatment services and facility specifications.

RELATES TO: KRS 2.015, 198B.260, 202A.241, 205.559(1), 210.005, 216B.010, 216B.015, 216B.105, 216B.990, 218A.202, 222.005, 309.080, 309.0831, 309.130, 310.021, 311.560, 311.571, 311.840 – 311.862, 314.011(8), 314.042, 319.050, 319.056, 319.064, 319C.010, 320.210(2), 335.080, 335.100, 335.300, 335.500, 42 C.F.R. Part 2, 45 C.F.R. 160, 164, 20 U.S.C. 1400, 29 U.S.C. 701, 42 U.S.C. 290ee-3, 1320d-2 – 1320d-8

STATUTORY AUTHORITY: KRS ~~[216B.010,]~~ 216B.042(1), 216B.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require the Cabinet for Health and Family Services to regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation, services, and facility specifications of chemical dependency treatment programs, including programs that elect to provide outpatient behavioral health services for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis.

Section 1. Definitions. (1) "Aftercare" means the process of providing continued services following primary chemical dependency treatment to support and increase gains made during treatment. (2) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant as defined by KRS 311.840(3)~~[licensed under KRS 311.840 to 311.862]~~;

(h) A licensed marriage and family therapist as defined by ~~[licensed and practicing in accordance with]~~ KRS 335.300(2);

(i) A licensed professional clinical counselor as defined by ~~[licensed and practicing in accordance with]~~ KRS 335.500(3); or

(j) A licensed professional art therapist as defined by KRS 309.130(2).

(3) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapy~~[therapist]~~ associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Governing authority" means the individual, agency, partnership, or corporation that directs and establishes policy concerning the management and operation of a chemical dependency treatment program.

(6) "Interdisciplinary team" means a group of at least four (4) professionals, including a physician, registered nurse, certified chemical dependency counselor, and a person with a master's degree in psychology, social work, or counseling.

(7) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(8) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(9) "Peer support specialist" means a paraprofessional who:

(a) Is a registered alcohol and drug peer support specialist in accordance with KRS 309.0831; or

(b)1. Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and

2. Works under the supervision of one (1) of the following:

a. Physician;

b. Psychiatrist;

c. Licensed psychologist;

d. Licensed psychological practitioner;

e. Licensed psychological associate;

f. Licensed clinical social worker;

g. Licensed marriage and family therapist;

h. Licensed professional clinical counselor;

i. Certified social worker;

j. Licensed marriage and family therapy associate;

k. Licensed professional counselor associate;

l. Licensed professional art therapist;

m. Licensed professional art therapist associate;

n. Advanced practice registered nurse;

o. Physician assistant;

p. Certified alcohol and drug counselor; or

q. Licensed clinical alcohol and drug counselor.

(10) "Restraint" means a physical or mechanical device used to restrict the movement of the patient or a portion of the patient's

body.

~~(11) "Substance use disorder" is defined by KRS 222.005(12)[means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:~~

~~(a) Intoxication;~~

~~(b) Withdrawal; or~~

~~(c) A substance induced mental health disorder].~~

(12) "Targeted case manager" means an individual who meets the requirements for a targeted case manager established by 908 KAR 2:260.

Section 2. Scope of Operation and Services. (1) A chemical dependency treatment service shall have a structured inpatient program to provide medical, social, diagnostic, and treatment services to individuals with substance use disorder.

(2) Chemical dependency treatment services shall:

(a) Have a duration of less than thirty (30) days;

(b) Be hospital based or freestanding;

(c) Have eight (8) or more patient beds;

(d) Be under the medical direction of a physician; and

(e) Provide continuous nursing services.

(3) If a chemical dependency treatment program provides outpatient behavioral health services, as established~~[described]~~ in Section 5 of this administrative regulation, for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:

(a) The outpatient behavioral health services shall be provided:

1. On a separate floor, in a separate wing, or in a separate building on the campus of the chemical dependency treatment program's inpatient facility; or

2. At an extension off the campus of the chemical dependency treatment program's inpatient facility;

(b) The chemical dependency treatment program shall pay a fee in the amount of \$250 per off-campus extension providing outpatient behavioral health services, submitted to the Office of Inspector General at the time of:

1. Initial licensure, if applicable;

2. The addition of a new extension to the chemical dependency treatment program's license; and

3. Renewal;

(c) Each off-campus extension or on-campus program of outpatient behavioral health services shall be listed on the chemical dependency treatment program's license;

(d) An off-campus extension or a separate building on the campus of the chemical dependency treatment program's inpatient facility where outpatient behavioral health services are provided shall comply with the physical environment requirements of Section 8 of this administrative regulation and be approved by the State Fire Marshal's office prior to:

1. Initial licensure;

2. The addition of the extension or on-campus program of outpatient behavioral health services in a separate building; or

3. A change of location;

(e) The program shall employ directly or by contract a sufficient number of personnel to provide outpatient behavioral health services;

(f) The outpatient behavioral health services program shall have a program director who:

1. May also serve as the chemical dependency treatment program's treatment director described in Section 3(10) of this administrative regulation; and

2. Shall be a:

a. Psychiatrist;

b. Physician;

c. [Certified or] Licensed psychologist or certified psychologist with autonomous functioning;

d. Licensed psychological practitioner;

e. Psychiatric nurse;

f. Advanced practice registered nurse;

g. Licensed professional clinical counselor;

h. Licensed marriage and family therapist;

- i. Licensed professional art therapist;
- j. Licensed [board-certified] behavioral analyst; or
- k. Licensed clinical social worker; and

(g) Unless an extension of time is granted pursuant to subsection (4) of this section, the outpatient program shall become accredited by one (1) of the following within one (1) year of adding outpatient behavioral health services to the chemical dependency treatment program's license:

- 1. The Joint Commission;
- 2. The Commission on Accreditation of Rehabilitation Facilities;
- 3. The Council on Accreditation; or
- 4. A nationally recognized accreditation organization.

(4)(a) If a chemical dependency treatment services outpatient program has not obtained accreditation within the one (1) year timeframe required by subsection (3)(g) of this section, the program may request a one (1) time only extension to complete the accreditation process.

(b) A request for extension shall:

1. Be submitted in writing to the Office of Inspector General at least sixty (60) days prior to expiration of the one (1) year deadline described in subsection (3)(g) of this section;

2. Include evidence that the program initiated the process of becoming accredited within sixty (60) days of adding outpatient behavioral health services to the program's license and is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated.

(5) A program shall cease providing outpatient behavioral health services if the program fails to:

(a) Become accredited in accordance with subsection (3)(g) of this section;

(b) Request an extension in accordance with subsection (4) of this section, if accreditation has not been obtained; or

(c) Maintain accreditation.

(6) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation and at the time of annual renewal.

Section 3. Administration and Operation. (1) The licensee shall be responsible for compliance with federal, state, and local laws and administrative regulations pertaining to the operation of chemical dependency treatment programs.

(2)(a) The governing authority shall appoint a program administrator who shall have a:

- 1. Bachelor's degree in a health or human services field;
- 2. Bachelor's degree in another field supplemented with one (1) year of work experience in the field of chemical dependency; or
- 3. High school diploma and four (4) years of experience in the field of chemical dependency.

(b) The governing authority shall establish, in writing:

- 1. Program goals and objectives; and
- 2. An evaluation plan for annual assessment of the attainment of the goals and objectives.

(3) Program administrator.

(a) The program administrator shall:

- 1. Be responsible for the daily management of the facility; and
- 2. Serve as the liaison between the governing authority and staff members.

(b) The program administrator shall keep the governing authority informed of the operations of the facility through reports and attendance at meetings of the governing authority.

(4) Administrative records and reports.

(a) A medication error, drug reaction, accident, or other incident involving a patient, visitor, or staff member[,] shall be documented in writing, signed by the program administrator and any witness to the event, and placed in an incident file.

(b) Licensure inspection reports, plans of correction, and program evaluations shall be available to the public, upon request, at the facility.

(5) Policies.

(a) Administrative policies. The program shall have a written administrative policy to cover each aspect of the facility's operation, including[as follows]:

1. A description of the organizational structure, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with other facilities and providers;

3. A description of the services included in the program, including outpatient behavioral health services if provided;

4. An expense and revenue accounting system following generally accepted accounting procedures;

5. A volunteer program; and

6. Program evaluation and quality assurance review.

(b) Patient care policy. A written patient care policy shall be developed and shall include a description of:

1. Actions to be taken if[when] a patient is lost, unaccounted for, or otherwise absent without authorization;

2. Provisions for patient visitation and use of telephones;

3. Provision of emergency medical services; and

4. Patient admission and discharge criteria, including the categories of individuals accepted and not accepted by the program.

(c) Patient rights policy. A written policy shall be developed and maintained to enhance patient dignity and to protect human rights. The policy shall assure that each patient or client receiving outpatient behavioral health services shall be[is]:

1. Informed of rules and regulations governing patient conduct and responsibilities, including the procedure for handling grievances;

2. Informed, prior to admission for rehabilitation or receipt of outpatient behavioral health services, of services available and charges for treatment, including charges not covered under Medicare, Medicaid, or other third-party payor;

3. Encouraged and assisted to:

a. Understand and exercise patient rights;

b. Voice grievances; and

c. Recommend changes in policies and services. Upon request by a patient, a grievance or recommendation shall be conveyed to that body within the organization with authority to take corrective action;

4. Presented with the opportunity to participate in the planning of his or her treatment;

5. Informed of the right to refuse to participate in experimental research;

6. Assured confidential treatment of records and presented with the opportunity to approve or refuse release of records to any individual not involved in his or her care, except as required by Kentucky law or third party payment contract; and

7. Treated with consideration, respect, and recognition of personal dignity and individuality, including privacy in treatment and personal health needs.

(6) Personnel.

(a) The governing authority shall:

1. Establish a personnel policy; and

2. Review the personnel policy at least one (1) time annually and update the policy as needed.

(b) There shall be a personnel record for each person employed by the chemical dependency treatment inpatient facility and, if applicable, the outpatient behavioral health services program, which shall include evidence[the following]:

1. [Evidence] Of the results of a tuberculosis test, performed either prior to or within the first week of employment and annually thereafter;

2. [Evidence] Of education, training, and experience, and a copy of current license or certification credentials, if applicable;

3. [Evidence] That the employee received orientation to the facility's written policies within the first week of employment; and

4. [Evidence] Of regular in-service training that[which] corresponds with job duties and includes a list of training and dates completed.

(7) Staffing requirements.

(a) The chemical dependency treatment program shall have personnel sufficient to meet patient needs at the inpatient facility on a twenty-four (24) hour basis.

(b) The number and classification of personnel required shall be based on the number of patients and the individual treatment

plans.

(8) Medical director. The chemical dependency treatment program's inpatient facility shall have a medical director who shall:

- (a) Be a physician licensed in accordance with KRS 311.571.[:];
- (b) Be responsible for the medical aspect of the program; and
- (c) Have duties ~~that~~^{which} shall include:
 1. Patient admission;
 2. Approval of patient treatment plans;
 3. Participation in the quality assurance review; and
 4. Provision of medical services, personally or by a designated physician, either in-house or on-call, on a twenty-four (24) hour basis.

(9) Interdisciplinary team. The chemical dependency treatment program shall have an interdisciplinary team responsible for:

- (a) Developing individual treatment plans;
- (b) Developing aftercare plans; and
- (c) Conducting quality assurance reviews.

(10) Treatment director. The chemical dependency treatment program shall have a full time treatment director responsible for:

- (a) Coordinating the interdisciplinary team in developing individual treatment plans;
- (b) Initiating a periodic review of each patient's treatment plan;
- (c) Supervising the maintenance of patient records; and
- (d) Coordinating the interdisciplinary team in developing an aftercare plan for each patient to provide continuity of care.

(11) Nursing services within the chemical dependency treatment program's inpatient facility.

(a) Nursing services shall be available on a twenty-four (24) hour basis.

(b) The program shall have at least one (1) full-time registered nurse.

(c) If a registered nurse is not on duty, a licensed practical nurse shall be responsible for the nursing care of patients and a registered nurse shall be on call.

(12) Medical supervision. A physician, or registered nurse under the direction of a physician, shall supervise:

(a) Implementation of the medical aspects of the treatment plan; and

(b) All staff directly involved in patient medical care.

(13) In-service training.

(a) All personnel of the chemical dependency treatment program's inpatient facility or, if applicable, the outpatient behavioral health services program[:]; shall participate in ongoing in-service training specific to the employee's job activities.

(b) Training shall include:

1. Thorough job orientation for new personnel; and
2. Regular in-service training emphasizing professional competence and the human relationship necessary for effective health care.

(14) Patient records of the chemical dependency treatment program's inpatient facility.

(a)1. An individual record shall be maintained for each patient.

2. Each entry shall be signed and dated by the person making the entry.

(b) At the time of admission, the following information shall be entered into the patient's record:

1. Name, date of admission, birth date and place, marital status, and Social Security number;
2. Person to contact in case of emergency;
3. Next of kin; and
4. Type and place of employment.

(c) The record shall contain documentation of medical services provided during detoxification and rehabilitation, including the results of physical examinations.

(d)1. The record shall contain the patient's treatment plan ~~establishing~~^{outlining} goals and objectives for the individual during treatment.

2. The record shall also contain documentation of how the plan was implemented and of patient progress in meeting the goals and objectives ~~established~~^{outlined} in the treatment plan.

(e) The record shall contain notation of medication administered, stating the date, time, dosage, and frequency of administration and the name of the person administering each

dose.

(f) The record shall contain a discharge summary and a plan for aftercare.

(g) The discharge summary shall be entered in the patient's record within seven (7) days after discharge and shall include:

1. The course and progress of the patient with regard to the individual treatment plan;

2. General observations of the patient's condition initially, during treatment, and at discharge; and

3. The recommendations and arrangements for further treatment, including prescribed medications and aftercare.

(h) If the patient is referred to another service provider after discharge, and if the patient executes a written release, a copy of the discharge summary shall be ~~with the patient's permission~~ sent to the provider with the patient's permission.

(i) After a patient's death or discharge, the completed record shall be placed in an inactive file and be retained for at least the longer of:

1. ~~Retained for~~ Six (6) years; or

2. If a minor, three (3) years after the patient reaches the age of majority pursuant to KRS 2.015~~under state law, whichever is longest~~.

(15) Confidentiality and Security: Use and Disclosure.

(a) The chemical dependency treatment program shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 ~~through~~^{te} 1320d-8, and 45 C.F.R. Parts 160 and 164~~, as amended~~, including the security requirements mandated by ~~subparts A and C of~~ 45 C.F.R. Part 164, Subparts A and C, or as provided by applicable federal or state law, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The chemical dependency treatment program may use and disclose medical records. Use and disclosure shall be as established or required by:

1. HIPAA, 42 U.S.C. 1320d-2 ~~through~~^{te} 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) This administrative regulation shall not be construed to ~~prohibit~~^{forbid} the chemical dependency treatment program from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 ~~through~~^{te} 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(16) Linkage agreements.

(a) The program shall have linkages through written agreements with providers of other levels of care ~~that could~~^{which may} be medically indicated to supplement the services available in the program.

(b) Linkages shall include a hospital and an emergency medical transportation service in the area.

(17) Quality assurance. The program shall have a quality assurance program that includes an effective mechanism for reviewing and evaluating patient care on a regular basis by the interdisciplinary team.

(18) Medications.

(a) A prescription or nonprescription medication administered to a patient shall be noted in the patient's records with the date, time, and dosage, and signed by the person administering the medication.

(b) Each prescription medication shall be plainly labeled with the:

1. Patient's name;
2. Name of the drug;
3. Strength;
4. Name of pharmacy;
5. Date;
6. Physician name;
7. Caution statement; and
8. Directions for use.

(c)1. A prescription or nonprescription medication shall not be

administered to a patient except on the written order of a physician or other practitioner acting within his or her statutory scope of practice.

2. A medication shall be administered by licensed personnel.

(d)1. Medication shall be kept in a locked storage area, which shall be well lighted and of sufficient size to permit storage without crowding.

2. Medication requiring refrigeration shall be kept in a separate locked box in a refrigerator.

3. Medication for external use shall be stored separately from medication administered by mouth or injection.

(e) A medication error or drug reaction shall be reported immediately to the medical director and treatment coordinator and an entry shall be made in the patient's record.

(f) An emergency medical kit, with contents approved by a physician, shall be:

1. Maintained at the facility; and

2. Inspected after use or at least monthly to remove deteriorated and outdated drugs and to ensure completeness of content.

(19) Restraints. Requirements for the use of restraints shall be met pursuant to KRS 202A.241 and 908 KAR 3:010, Section 9.

(20) Activities schedule. A daily schedule of program activities shall be posted in the chemical dependency treatment program's inpatient facility.

Section 4. Provision of Services. (1) Withdrawal management services [Detoxification]. A chemical dependency treatment program's inpatient facility shall:

(a) Provide [medically monitored] intensive inpatient withdrawal [medical detoxification] services pursuant to the requirements of 902 KAR 20:111 and the service criteria in the most recent version of The American Society of Addiction Medicine (ASAM) Criteria relating to the appropriate level of care for the patient. Services shall be provided directly or through another licensed provider for a patient who meets the:

1. [(a)] Diagnostic criteria for substance intoxication or withdrawal disorder as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) for alcohol, tobacco, and other drug use; and

2. [(b)] Dimensional criteria for medically monitored intensive inpatient services or medically managed intensive inpatient services in accordance with the most recent version of The ASAM [American Society of Addiction Medicine (ASAM)] Criteria;

(b) Meet the service criteria established by the most recent version of The ASAM Criteria for ASAM level of care 3.7, medically monitored withdrawal management services, if providing that level of care, including:

1. A planned and structured regimen of twenty-four (24) hour professionally directed evaluation, observation, medical monitoring, and addiction treatment;

2. Twenty-four (24) hour nursing care;

3. Twenty-four (24) hour access to a physician; and

4. Twenty-four (24) hour access to a psychiatrist; and

(c) Meet the service criteria established by the most recent version of The ASAM Criteria for ASAM level of care 4.0, medically managed withdrawal management services, if providing that level of care, including:

1. A planned and structured regimen of twenty-four (24) hour professionally directed evaluation, observation, medical monitoring, and addiction treatment;

2. Twenty-four (24) hour nursing care;

3. Twenty-four (24) hour physician care; and

4. Twenty-four (24) hour access to a psychiatrist [requires detoxification].

(2) High intensity residential services. A chemical treatment dependency program may provide clinically managed high intensity residential services. If a chemical dependency treatment program provides this level of care, it shall comply with the requirements of 908 KAR 1:372, Section 2, in addition to the requirements of this administrative regulation.

(3) Rehabilitation. A chemical dependency treatment program's inpatient facility shall provide:

(a) Medical services as needed, under the supervision of a physician;

(b) Scheduled individual, group, and family counseling;

(c) Psychological testing and evaluation as needed;

(d) Education of the patient on the subject of chemical dependency and related lifestyle issues, including nutrition and communication skills;

(e) Recreational activities with facilities and equipment, consistent with the patient's needs and the therapeutic program;

(f) Referral to other rehabilitative or community service agencies providing services not available through the program; and

(g) Aftercare services provided directly or through arrangement with another agency.

(4) [(3)] Physical examinations. Within ten (10) days prior to, or three (3) days after, admission to the chemical dependency treatment program's inpatient facility for rehabilitation, a patient shall have a physical examination with tests ordered by a physician.

(5) [(4)] Psychosocial history.

(a) A patient in a chemical dependency treatment program's inpatient facility shall have a psychosocial history and assessment interview within seventy-two (72) hours after admission for rehabilitation.

(b) The following data shall be collected and recorded in the patient record:

1. History of alcohol and drug use;

2. A determination of current emotional state;

3. Vocational history;

4. Familial relationships; and

5. Educational background.

(6) [(5)] Treatment plan.

(a) The interdisciplinary team, with the participation of the patient, shall develop an individual treatment plan within four (4) days after admission to the chemical dependency treatment program's inpatient facility for rehabilitation, based on the patient's medical evaluation and psychosocial history and assessment.

(b) The treatment plan shall:

1. Specify the services required for meeting the patient's needs;

2. Identify goals necessary for the patient to achieve, maintain, or reestablish physical health and adaptive capabilities;

3. Establish goals with both long-term and short-term objectives and the anticipated time expected to meet these goals; and

4. Identify the location and frequency of treatment procedures, including referrals for a required service not provided by the program.

(7) [(6)] The treatment plan shall be reviewed and updated at least weekly for the duration of the inpatient treatment.

(8) [(7)](a) The patient's family or significant others shall be involved in the treatment process, if approved by the patient.

(b) An attempt to involve family members or significant others shall be reported in the patient's medical record.

(9) [(8)] Aftercare plan.

(a)1. A written aftercare plan shall be developed prior to completion of treatment in the chemical dependency treatment program's inpatient facility by the:

a. Interdisciplinary team;

b. Patient; and

c. With the patient's permission, [the] patient's family or significant others.

2. The aftercare plan shall be designed to establish continued contact for the support of the patient.

(b) The aftercare plan shall include methods and procedures to meet patient needs through direct contact or with assistance from other community human services organizations.

(c) If aftercare services are provided directly, review and update of the aftercare plan shall be conducted with the frequency of review determined by the:

1. Interdisciplinary team;

2. Patient; and

3. With the patient's permission, [the] patient's family or significant others.

(d) If the patient is referred to another agency for aftercare services, follow-up shall be conducted to determine if services are being provided.

Section 5. Provision of Outpatient Behavioral Health Services, Plan of Care, and Client Records. (1) Pursuant to Section 2(3) of this administrative regulation, a chemical dependency treatment program may provide one (1) or more of the following outpatient behavioral health services for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:

(a) Screening, which shall be provided face-to-face or via telehealth by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate to determine the:

1. Likelihood that an individual has a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis; and

2. Need for an assessment;

(b) Assessment, which shall:

1. Be provided face-to-face or via telehealth by a behavioral health professional, behavioral health professional under clinical supervision, a certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate who gathers information and engages in a process with the client, thereby enabling the professional to:

a. Establish the presence or absence of a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis;

b. Determine the client's readiness for change;

c. Identify the client's strengths or problem areas that could [which may] affect the treatment and recovery processes; and

d. Engage the client in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and

4. Not include psychological or psychiatric evaluations or assessments;

(c) Psychological testing, which shall:

1. Be performed face-to-face or via telehealth by a licensed psychologist, licensed psychological associate, or licensed psychological practitioner; and

2. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;

(d) Crisis intervention, which:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities;

3. Shall be provided:

a. ~~[On-site at the chemical dependency treatment program's facility;~~

b.] As an immediate relief to the presenting problem or threat; and

b.[c.] In a face-to-face, one (1) on one (1) encounter or as a comparable service provided via telehealth;

4. ~~[May include verbal de-escalation, risk assessment, or cognitive therapy;~~

5.] Shall be provided by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Certified alcohol and drug counselor;

d. Licensed clinical alcohol and drug counselor; or

e. Licensed clinical alcohol and drug counselor associate;

5.[6.] Shall be followed by a referral to noncrisis services, if

applicable; and

6.[7.] May include:

a. Further service prevention planning, including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy;

(e) Mobile crisis services, which shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

2. Be provided for a duration of less than twenty-four (24) hours;

3. Not be an overnight service;

4. Be a multi-disciplinary team based intervention performed face-to-face or via telehealth that ensures access to acute substance use services and supports to:

a. Reduce symptoms or harm; or

b. Safely transition an individual in an acute crisis to appropriate, least restrictive level of care;

5. Involve all services and supports necessary to provide:

a. Integrated crisis prevention;

b. Assessment and disposition;

c. Intervention;

d. Continuity of care recommendations; and

e. Follow-up services;

6. Be provided in a home or community setting by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Certified alcohol and drug counselor;

d. Licensed clinical alcohol and drug counselor; or

e. Licensed clinical alcohol and drug counselor associate; and

7. Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;

(f) Day treatment, which shall:

1. Be a nonresidential, intensive treatment program designed for children who:

a. Have a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis;

b. Are under twenty-one (21) years of age; and

c. Are at high risk of out-of-home placement due to a behavioral health issue;

2. Consist of an organized, behavioral health program of treatment and rehabilitative services for substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis;

3. Have unified policies and procedures that address the organization's philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning;

4. Include ~~[the following]:~~

a. Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

b. Behavior management and social skill training;

c. Independent living skills that correlate to the age and development stage of the client; and

d. Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;

5. Be provided ~~[as follows]:~~

a. Face-to-face or via telehealth;

b. In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

c.[b.] On school days and during scheduled breaks;

d.[c.] In coordination with the child's individual educational plan or Section 504 plan if the child has an individual educational plan or Section 504 plan;

e.[d.] By personnel that includes a behavioral health professional, a behavioral health professional under clinical supervision, a certified alcohol and drug counselor, a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a peer support specialist; and

[e-] According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

6. Not include a therapeutic clinical service that is included in a child's individualized education plan;

(g) Peer support, which shall:

1. Be provided by a peer support specialist;

2. Be structured and scheduled nonclinical therapeutic activity with a client or group of clients;

3. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills; **[and]**

4. Be identified in the client's plan of care developed through a person-centered planning process; **and**

5. Be provided face-to-face or via telehealth:

(h) Intensive outpatient program services, which shall:

1. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

2. Be provided at least:

a. Three (3) hours per day at least three (3) days per week for adults; or

b. Six (6) hours per week for adolescents;

3. Include ~~[the following]~~:

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy unless contraindicated;

d. Crisis intervention; or

e. Psycho-education during which the client or client's family member shall be:

(i) Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

(ii) Taught how to cope with the client's diagnosis or condition in a successful manner;

4. Include a treatment plan, which shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lower level of care;

5. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate;

6. Include access to a board-certified or board-eligible psychiatrist for consultation;

7. Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; **[and]**

8. Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person; **and**

9. Be provided face-to-face or via telehealth:

(i) Individual outpatient therapy, which shall:

1. Be provided to promote the:

a. Health and wellbeing of the client; or

b. Recovery from a substance related disorder;

2. Consist of:

a. A face-to-face encounter or telehealth consultation with the client; and

b. A behavioral health therapeutic intervention provided in accordance with the client's plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the client; and

c. Improving functioning;

4. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy unless additional time with the client is medically necessary in accordance with 907 KAR 3:130; and

5. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate;

(j) Group outpatient therapy, which shall:

1. Be provided to promote the:

a. Health and wellbeing of the client; or

b. Recovery from a substance related disorder;

2. Consist of a face-to-face behavioral health therapeutic intervention or telehealth consultation provided in accordance with the client's plan of care;

3. Excluding multi-family group therapy, be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a spouse, significant other, parent or person with custodial control, child, sibling, stepparent, stepchild, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;

4. Focus on the psychological needs of the client as evidenced in the client's plan of care;

5. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

6. Not include physical exercise, a recreational activity, an educational activity, or a social activity;

7. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy [per-client] unless additional time is medically necessary in accordance with 907 KAR 3:130;

8. Ensure that the group has a deliberate focus and defined course of treatment;

9. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and

10. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate who shall maintain individual notes regarding each client within the group in the client's record;

(k) Family outpatient therapy, which shall:

1. Consist of a ~~[face-to-face]~~ behavioral health therapeutic intervention provided face-to-face or via telehealth through scheduled therapeutic visits between the therapist, at least one (1) member of the client's family, and the client unless the client's presence is not required in his or her plan of care;

2. Address issues interfering with the relational functioning of the family;

3. Seek to improve interpersonal relationships within the client's home environment;

4. Be provided to promote the health and wellbeing of the client or recovery from a substance use disorder;

5. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy [per-client] unless additional time is medically necessary in accordance with 907 KAR 3:130; and

6. Be provided by a behavioral health professional, a behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate;

(l) Collateral outpatient therapy, which shall consist of a face-to-face or telehealth behavioral health consultation:

1. With a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21), household member, legal representative, school personnel, or treating professional;

2. Provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate; and

3. Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

(m) Screening, brief intervention, and referral to treatment for substance use disorders, which shall:

1. Be provided face-to-face or via telehealth;

2. Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;

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3.[2.] Consist of:

a. Using a standardized screening tool to assess the individual for risky substance use behavior;

b. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice; and

c. Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and

4.[3.] Be provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate; [or]

(n) Targeted case management services, which shall:

1. Include services to an:

a. Adult or a child with substance use disorder; or

b. Adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues;

2. Be provided by a targeted case manager [as described in subsection (2) or (3) of this section]; and

3. Include the following assistance:

a. Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;

b. Development of a specific care plan ~~that~~[which] shall be based on information collected during the assessment and revised if needed upon reassessment;

c. Referral and related activities, which may include:

(i) Scheduling appointments for the client to help the individual obtain needed services; or

(ii) Activities that help link the client with medical, social, educational providers, or other programs and services ~~that~~[which] address identified needs and achieve goals specified in the care plan;

d. Monitoring, which shall be face-to-face or via telehealth and occur no less than once every three (3) months to determine that:

(i) Services are furnished according to the client's care plan;

(ii) Services in the care plan are adequate; and

(iii) Changes in the needs or status of the client are reflected in the care plan; and

e. Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:

(i) Access services;

(ii) Identify needs and supports to assist the client in obtaining services; and

(iii) Identify changes in the client's needs;

(o) Service planning, which shall be provided face-to-face or via telehealth by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate, any of which shall be of the client's choosing to:

1. Assist the client in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of a substance use disorder or co-occurring disorder;

2. Restore the client's functional level to the client's best possible functional level; and

3. Develop a service plan, which:

a. Shall be directed and signed by the client; and

b. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan; [or]

(p) Medication assisted treatment with behavioral health therapy, which shall:

1. Exclude methadone-based treatment restricted to licensure in accordance with 908 KAR 1:370 and 908 KAR 1:374;

2. Require an advanced practice registered nurse, a physician,

or a physician assistant who prescribes FDA-approved drugs for the treatment of opioid addiction in adult patients to:

a. Document in the patient's record whether or not the patient is compliant with prescribed dosing as evidenced by the results of:

(i) A KASPER report released to the practitioner pursuant to KRS 218A.202(7)(e); and

(ii) Drug testing; and

b. Comply with the prescribing and dispensing standards in 201 KAR 9:270 or 201 KAR 20:065 for FDA-approved drugs used for the treatment of opioid addiction; [and]

3. Be co-located within the same practicing site as the prescribing provider or conducted via telehealth; and

4. Include individual and group outpatient therapy as a service and document monitoring of compliance with recommended non-medication therapies; or

(g) Ambulatory withdrawal management services, which shall be:

1. Provided face-to-face to patients who meet the:

a. Diagnostic criteria for substance intoxication or withdrawal disorder as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM); and

b. Dimensional criteria for outpatient withdrawal management as established in the most recent version of The ASAM Criteria;

2. Provided in regularly scheduled sessions; and

3. Delivered in accordance with clinical protocols established for ambulatory withdrawal management in the most recent version of The ASAM Criteria.

(2) [A case manager who provides targeted case management services to clients with a substance use disorder shall:

(a) Be a certified alcohol and drug counselor, meet the grandfather requirements of 907 KAR 15:040, Section 4(1)(a)3, or have a bachelor's degree in a human services field, including:

1. Psychology;

2. Sociology;

3. Social work;

4. Family studies;

5. Human services;

6. Counseling;

7. Nursing;

8. Behavioral analysis;

9. Public health;

10. Special education;

11. Gerontology;

12. Recreational therapy;

13. Education;

14. Occupational therapy;

15. Physical therapy;

16. Speech-language pathology;

17. Rehabilitation counseling; or

18. Faith-based education;

(b)1. Have a minimum of one (1) year of full-time employment working directly with adolescents or adults in a human service setting after completion of the requirements described in paragraph (a) of this subsection; or

2. Have a master's degree in a human services field as described in paragraph (a) of this subsection;

(c)1. Have successfully completed case management training in accordance with 908 KAR 2:260; and

2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and

(d) Be supervised by a behavioral health professional who:

1. Has completed case management training in accordance with 908 KAR 2:260; and

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual in person basis.

(3) A case manager who provides targeted case management services to clients with a mental health or substance use disorder and chronic or complex physical health issues shall:

(a) Meet the requirements of subsection (2)(a) of this section;

(b)1. After completion of a bachelor's degree, have a minimum

~~of five (5) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services; or~~

~~2. After completion of a master's degree in a human services field as described in subsection (2)(a) of this section, have a minimum of two (2) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services;~~

~~(c)1. Have successfully completed case management training in accordance with 908 KAR 2:260; and~~

~~2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and~~

~~(d) For a bachelor's level case manager, be supervised by a behavioral health professional who:~~

~~1. Has completed case management training in accordance with 908 KAR 2:260; and~~

~~2. Has supervisory contact at least three (3) times per month with at least two (2) of the contacts on an individual in person basis.~~

~~(4)] Plan of care.~~

~~(a) Each client receiving outpatient behavioral health services from a chemical dependency treatment program shall have an individual plan of care signed by a behavioral health professional.~~

~~(b) A plan of care shall:~~

~~1. Describe the services to be provided to the client, including the frequency of services;~~

~~2. Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;~~

~~3. Describe the client's functional abilities and limitations or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;~~

~~4. Specify each staff member assigned to work with the client;~~

~~5. Identify methods of involving the client's family or significant others if indicated;~~

~~6. Establish[Specify] criteria to be met for termination of treatment;~~

~~7. Include any referrals necessary for services not provided directly by the chemical dependency treatment program; and~~

~~8. State the date scheduled for review of the plan.~~

~~(c) The client shall participate to the maximum extent feasible in the development of his or her plan of care, and the participation shall be documented in the client's record.~~

~~(d)1. The initial plan of care shall be developed through multidisciplinary team conferences at least thirty (30) days following the first ten (10) days of treatment.~~

~~2. The plan of care for individuals receiving intensive outpatient program services shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.~~

~~3. Except for intensive outpatient program services, the plan of care for individuals receiving any other outpatient behavioral health service established[described] in subsection (1) of this section shall be reviewed and updated every six (6) months or earlier if clinically indicated.~~

~~4. The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.~~

~~(3)[(5)] Client Records.~~

~~(a) A client record shall be maintained for each individual receiving outpatient behavioral health services.~~

~~(b) Each entry shall be current, dated, signed, and indexed according to the service received.~~

~~(c) Each client record shall contain:~~

~~1. An identification sheet, including the client's name, address, age, gender, marital status, expected source of payment, and referral source;~~

~~2. Information on the purpose for seeking a service;~~

~~3. If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;~~

~~4. Screening information pertaining to the mental health or substance use disorder;~~

5. If applicable, a psychosocial history;

6. If applicable, staff notes on services provided;

7. If applicable, the client's plan of care;

8. If applicable, disposition;

9. If applicable, assigned status;

10. If applicable, assigned therapists; and

11. If applicable, a termination study ~~restating~~[recapitulating] findings and events during treatment, clinical impressions, and condition on termination.

Section 6. Compliance with Building Codes, Ordinances, and Regulations; Chemical Dependency Treatment Program's Inpatient Facility. (1) The provisions of this administrative regulation shall not relieve the licensee from compliance with building codes, ordinances, and administrative regulations ~~that~~[which] are enforced by city, county, or state jurisdictions.

(2) The following shall apply:

(a) Requirements for safety pursuant to the National Fire Protection Association 101, Life Safety Code, ***incorporated by reference in 815 KAR 10:060 and*** adopted by the Kentucky Department of Housing, Buildings and Construction;

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through ~~815 KAR 20:195~~[20:194]; and

(c) Requirements for making buildings and facilities accessible to and usable by persons with disabilities.

(3) The facility shall be approved by the Fire Marshal's Office before a license or license renewal is granted.

(4) The facility shall receive necessary approval from appropriate agencies prior to occupancy and licensure.

(5) Physical and sanitary environment.

(a) The physical plant and overall facility environment shall be maintained to protect the safety and well-being of patients, personnel, and visitors.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures ~~for~~[in each of the following areas]:

1. Plant maintenance;

2. Laundry operations either on site or off site; and

3. Housekeeping.

(c) The facility buildings, equipment, and surroundings shall be kept in good repair, neat, clean, free from accumulation of dirt and rubbish, and free from foul, stale, or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for each area, and copies shall be available to personnel.

3. Equipment and supplies shall be provided for cleaning surfaces. The equipment shall be maintained in a safe, sanitary condition.

4. A hazardous cleaning solution, compound, or substance shall be labeled, stored in an approved container, and kept separate from nonhazardous cleaning materials.

5. The facility shall be free from insects, rodents, and their harborage.

6. Garbage and trash shall be stored in closed containers in an area separate from an area used for the preparation or storage of food.

7. The garbage and trash area shall be cleaned regularly and shall be in good repair.

(d) The facility shall have available at all times a quantity of linen essential to the proper care and comfort of residents.

1. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

2. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in a separate area ventilated to the exterior of the building.

Section 7. Chemical Dependency Treatment Program's Inpatient Facility Requirements and Special Conditions. (1) Patient rooms. Each patient room shall meet the ~~following~~ requirements ***established in this subsection.[:]***

(a) The maximum room capacity shall be six (6) patients.

(b) The minimum room area, exclusive of toilet room, closet,

locker, wardrobe, or vestibule, shall be:

1. 100 square feet for a one (1) bed room; and
2. Eighty (80) square feet per bed for multibed rooms.

(c)1. Partitions, cubicle curtains, or placement of furniture shall be used to provide privacy in a multiperson room.

2. Ample closet and drawer space shall be provided for the storage of each patient's personal property.

(d) The placement of a patient in a multibed room shall be appropriate to the age and program needs of the patient.

(2) Lavatory.

(a) In a single or multibed room with a private toilet room, the lavatory may be located in the toilet room.

(b) If two (2) or more patients share a common toilet, a lavatory shall be provided in each patient room.

(3) Centralized toilet area.

(a) If a centralized toilet area is used, the facility shall provide, for each gender on each floor, at least one (1) toilet for each eight (8) residents or a major fraction thereof.

(b) Toilets shall be separated by a permanent partition and at least one (1) toilet for each gender shall be designed for wheelchair use.

(4) Patient baths.

(a) There shall be at least one (1) shower stall or one (1) bathtub for each fifteen (15) patients not individually served.

(b) Each bathtub or shower shall provide space for the private use of the fixture and for dressing.

(5) The patient shall be encouraged to take responsibility for maintaining his or her own living quarters and for other day-to-day housekeeping activities of the program, as appropriate to his or her clinical status.

(6) Dietary service.

(a) The facility shall have a dietary department, organized, directed, and staffed to provide quality food service and optimal nutritional care.

1. The dietary service shall be directed on a full-time basis by an individual who, by education or specialized training and experience, is knowledgeable in food service management.

2. The dietary service shall have at least one (1) dietician licensed pursuant to KRS 310.021 to supervise the nutritional aspects of patient care and to approve menus on at least a consultative basis.

3. If food service personnel are assigned a duty outside the dietary department, the duty shall not interfere with the sanitation, safety, or time required for regular dietary assignments.

(b)1. A menu shall be planned, written, and rotated to avoid repetition.

2. Nutritional needs shall be met in accordance with:

a. Recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; and

b. Physician orders, if applicable.

(c)1. A meal served shall correspond with the posted menu.

2. If a change in the menu is necessary;

a. Substitution shall provide equal nutritive value; and

b. The change shall be recorded on the menu.

3. A menu shall be kept on file for at least thirty (30) days.

(d) Food shall be:

1. Prepared by methods that conserve nutritive value, flavor, and appearance; and

2. Served at the proper temperature.

(e)1. At least three (3) meals shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and breakfast.

2. Each meal shall be served at a regular time and a nourishing between-meal or bedtime snack shall be offered.

(f) Food services shall be provided in accordance with 902 KAR 45:005.

Section 8. Physical environment of an off-campus extension or separate building on the campus of the chemical dependency treatment program's inpatient facility where outpatient behavioral health services are provided. (1) Accessibility. The off-campus extension or separate building on the campus of the chemical

dependency treatment program's inpatient facility shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and 815 KAR 7:120.

(2) Physical location and overall environment.

(a) The program shall:

1. Comply with building codes, ordinances, and administrative regulations that[which] are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom; and

6. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in a manner that assures the safety and well-being of clients, personnel, and visitors.

(3) Prior to occupancy, the facility shall have final approval from appropriate agencies.

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, March 8, 2021)

902 KAR 20:440. Facilities specifications, operation and services; residential crisis stabilization units.

RELATES TO: KRS 17.500, 200.503(2), 210.005, 216B.050, 216B.105(2), 309.080(4), 309.0831, 309.130(2), 311.571, 311.840 – 311.862, 314.042, 319.050, 319.056, 319.064, 319C.010, 335.080, 335.100, 335.300, 335.500, 439.3401, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 209ee-3, 42 C.F.R. Part 2

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of residential crisis stabilization units that[which] serve at-risk children or children with severe emotional disabilities, at-risk adults or adults with severe mental illness, or individuals with substance use disorder or co-occurring disorders.

Section 1. Definitions. (1) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant as defined by KRS 311.840(3)~~[licensed under KRS 311.840 to 311.862];~~

(h) A licensed marriage and family therapist as defined by [licensed and practicing in accordance with] KRS 335.300(2);

(i) A licensed professional clinical counselor as defined by [licensed and practicing in accordance with] KRS 335.500(3); or

(j) A licensed professional art therapist as defined by KRS 309.130(2).

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapy~~[therapist]~~ associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Chemical restraint" means the use of a drug that:

(a) Is administered to manage a resident's behavior in a way that reduces the [safety] risk to the resident or others;

(b) Has the temporary effect of restricting the resident's freedom of movement; and

(c) Is not a standard treatment for the resident's medical or psychiatric condition.

(6) "Child with a severe emotional disability" is defined by KRS 200.503(3).

(7) "Crisis stabilization unit" means a community-based facility that is not part of an inpatient unit and that~~[which]~~ provides crisis services to no more than sixteen (16) ~~[twelve (12)]~~ clients who require overnight stays.

(8) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4)~~[7]~~

(9) "Mechanical restraint" means any device attached or adjacent to a resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(10) ~~[(9)]~~ "Peer support specialist" means a paraprofessional who:

(a) is a registered alcohol and drug peer support specialist in accordance with KRS 309.0831; or

b.1. Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and

2.~~[(b)]~~ Works under the supervision of one (1) of the following:

a.~~[1.]~~ Physician;

b.~~[2.]~~ Psychiatrist;

c.~~[3.]~~ Licensed psychologist;

d.~~[4.]~~ Licensed psychological practitioner;

e.~~[5.]~~ Licensed psychological associate;

f.~~[6.]~~ Licensed clinical social worker;

g.~~[7.]~~ Licensed marriage and family therapist;

h.~~[8.]~~ Licensed professional clinical counselor;

i.~~[9.]~~ Certified social worker;

j.~~[10.]~~ Licensed marriage and family therapy~~[therapist]~~ associate;

k.~~[11.]~~ Licensed professional counselor associate;

l.~~[12.]~~ Licensed professional art therapist;

m.~~[13.]~~ Licensed professional art therapist associate;

n.~~[14.]~~ Advanced practice registered nurse;

o.~~[15.]~~ Physician assistant; ~~[or]~~

p.~~[16.]~~ Certified alcohol and drug counselor; or

q. Licensed clinical alcohol and drug counselor.

~~[(11)] [(10)]~~ "Personal restraint" means the application of physical force without the use of any device for the purpose of restraining the free movement of a resident's body and does not include briefly holding without undue force a resident in order to calm or comfort him or her or holding a resident's hand to safely escort him or her from one (1) area to another.

(12) ~~[(11)]~~ "Seclusion" means the involuntary confinement of a resident alone in a room or in an area from which the resident is physically prevented from leaving.

(13) ~~[(12)]~~ (12) "Serious mental illness", "severe mental illness", or "SMI" means a diagnosis of a major mental disorder as included in the current edition of the Diagnostic and Statistical Manual of Mental Disorders under:

(a) Schizophrenia spectrum and other psychotic disorders;

(b) Bipolar and related disorders;

(c) Depressive disorders; or

(d) Post-traumatic stress disorders (under trauma and stressor related disorders) ["Severe mental illness" means the conditions defined by KRS 210.005(2) and (3)].

(14) ~~[(13)]~~ "Substance use disorder" is defined by KRS 222.005(12)~~[means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:~~

(a) Intoxication;

(b) Withdrawal; or

(c) A substance-induced mental health disorder].

(15) ~~[(14)]~~ "Time out" means the restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control.

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a residential crisis stabilization unit shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Residential Crisis Stabilization Unit; and

(b) An accompanying initial licensure fee in the amount of \$750, made payable to the Kentucky State Treasurer.

(2) At least sixty (60) calendar days prior to the date of annual renewal, a residential crisis stabilization unit shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Residential Crisis Stabilization Unit; and

(b) An annual renewal fee of \$500, made payable to the Kentucky State Treasurer.

(3)(a) Name change. A residential crisis stabilization unit shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the unit's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A residential crisis stabilization unit shall not change the location where the unit is operating ~~[operated]~~ until an Application for License to Operate a Residential Crisis Stabilization Unit accompanied by a fee of \$100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of a residential crisis stabilization unit shall submit to the Office of Inspector General an Application for License to Operate a Residential Crisis Stabilization Unit accompanied by a fee of \$750 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur in accordance with the criteria of 902 KAR 20:008, Section 2(16)~~[if more than twenty-five (25) percent of an existing residential crisis stabilization unit or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another].~~

(4) To obtain approval of initial licensure or renew a license to operate a residential crisis stabilization unit, the applicant ~~[licensee]~~ shall be in compliance with this administrative regulation and federal, state, and local laws and administrative regulations pertaining to the operation of the unit.

~~Section 3. [Location. If an alcohol and other drug abuse treatment program licensed pursuant to 908 KAR 1:370 obtains separate licensure under this administrative regulation to operate a residential crisis stabilization unit, the unit shall be located off the campus of any residential treatment program licensed pursuant to 908 KAR 1:370.~~

~~Section 4.] Accreditation. (1) Unless an extension is granted pursuant to subsection (2) of this section, an entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall become accredited within one (1) year of initial licensure by ~~one (1) of the following~~:~~

- ~~(a) The Joint Commission;~~
- ~~(b) The Commission on Accreditation of Rehabilitation Facilities;~~

- ~~(c) The Council on Accreditation; or~~
- ~~(d) A nationally recognized accreditation organization.~~

~~(2)(a) If a residential crisis stabilization unit has not obtained accreditation in accordance with subsection (1) of this section within one (1) year of initial licensure, the facility may request a one (1) time only extension to complete the accreditation process.~~

~~(b) A request for extension shall:~~

~~1. Be submitted in writing to the Office of Inspector General at least sixty (60) days prior to the date of annual renewal;~~

~~2. Include evidence that the facility initiated the process of becoming accredited within sixty (60) days of initial licensure and is continuing its efforts to obtain accreditation; and~~

~~3. Include an estimated timeframe by which approval of accreditation is anticipated.~~

~~(3) The cabinet shall revoke the license if the residential crisis stabilization unit fails to ~~meet one (1) of the following requirements~~:~~

~~(a)1. Become accredited in accordance with subsection (1) of this section; or~~

~~2.a.(b) Request an extension in accordance with subsection (2) of this section if accreditation ~~will not be~~~~has not been~~ obtained within one (1) year of initial licensure; and~~

~~b. Become accredited during the extension granted in accordance with subsection (2) of this section; or~~

~~(b)(c) Maintain accreditation.~~

~~(4) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation within one (1) year of initial licensure and at the time of annual renewal ~~established~~~~described~~ in Section 2(2) of this administrative regulation.~~

~~Section 4.[5.] Administration and Operation. (1) The licensee shall be legally responsible for:~~

- ~~(a) The residential crisis stabilization unit;~~
- ~~(b) The establishment of administrative policy; and~~

~~(c) Ensuring compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the residential crisis stabilization unit.~~

~~(2) Executive director. The licensee shall establish lines of authority and designate an executive director who:~~

~~(a) May serve in a dual role as the residential crisis stabilization unit's program director established~~described~~ in subsection (5) of this section;~~

~~(b) May serve in a dual role as the executive director of a behavioral health services organization (BHSO) or alcohol and other drug treatment entity (AODE) if:~~

~~1. The residential crisis stabilization unit and the BHSO or AODE are owned by the same entity; and~~

~~2. The residential crisis stabilization unit has a linkage with the BHSO or AODE to assist with continuity of care if needed after discharge from the residential crisis stabilization unit;~~

~~(c) Shall be responsible for the administrative management of the residential crisis stabilization unit, including:~~

~~1. The total program of the unit in accordance with the unit's written policies; and~~

~~2. Evaluation of the unit as it relates to the needs of each resident; and~~

~~(d) Shall have a master's degree in business administration or a human services field, or a bachelor's degree in a human services field, including:~~

- ~~1. Social work;~~
- ~~2. Sociology;~~
- ~~3. Psychology;~~
- ~~4. Guidance and counseling;~~
- ~~5. Education;~~
- ~~6. Religion;~~
- ~~7. Business administration;~~
- ~~8. Criminal justice;~~
- ~~9. Public administration;~~
- ~~10. Child care administration;~~
- ~~11. Christian education;~~
- ~~12. Divinity;~~
- ~~13. Pastoral counseling;~~
- ~~14. Nursing;~~
- ~~15. Public health; or~~

~~16. Another human service field related to working with children with severe emotional disabilities or clients with severe mental illness.~~

~~(3) An executive director with a master's degree shall have a minimum of two (2) years of prior supervisory experience in a human services program.~~

~~(4) An executive director with a bachelor's degree shall have a minimum of two (2) years of prior experience in a human services program plus two (2) years of prior supervisory experience in a human services program.~~

~~(5) A residential crisis stabilization unit shall have a program director who:~~

~~(a) May serve in a dual role as the program director of a BHSO or AODE if:~~

~~1. The residential crisis stabilization unit and the BHSO or AODE are owned by the same entity; and~~

~~2. The residential crisis stabilization unit has a linkage with the BHSO or AODE to assist with continuity of care if needed after discharge from the residential crisis stabilization unit; and~~

~~(b) Shall be a:~~

- ~~1. Psychiatrist;~~
- ~~2. Physician;~~
- ~~3. ~~Certified or~~ Licensed psychologist or certified psychologist with autonomous functioning;~~

~~4. Licensed psychological practitioner;~~

~~5. Advanced practice registered nurse;~~

~~6. Licensed professional clinical counselor;~~

~~7. Licensed marriage and family therapist;~~

~~8. Licensed professional art therapist;~~

~~9. Licensed ~~board certified~~ behavior analyst; or~~

~~10. Licensed clinical social worker.~~

~~Section 5.[6.] License Procedures. An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.~~

~~Section 6.[7.] Background Checks and Personnel Records. (1) All personnel of a residential crisis stabilization unit shall:~~

~~(a) Have a criminal record check performed upon initial hire and every two (2) years through the Administrative Office of the Courts or the Kentucky State Police;~~

~~(b) Not have a criminal conviction, or plea of guilty, to a:~~

~~1. Sex crime as defined by~~specified in~~ KRS 17.500(8);~~

~~2. Violent crime as established~~specified~~ in KRS 439.3401;~~

~~3. Criminal offense against a minor as established~~specified~~ in KRS 17.500; or~~

~~4. Class A felony; and~~

~~(c) Not be listed on the ~~following~~:~~

~~1. Central registry established by 922 KAR 1:470;~~

~~2. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or~~

~~3. Caregiver misconduct registry established by ~~922 KAR 5:120E and~~ 922 KAR 5:120.~~

~~(2)(a) Prior to initial hire, an out-of-state criminal background~~

information check shall be obtained for any applicant recommended for employment in a residential crisis stabilization unit who has resided or resides outside of the Commonwealth.

~~[(b) A residential crisis stabilization unit may use Kentucky's national background check system established by 906 KAR 1:190 to satisfy the background check requirements of subsections (1) and (2)(a) of this section.]~~

(3) A residential crisis stabilization unit shall perform annual criminal record and registry checks as ~~established~~described in subsection (1) of this section on a random sample of at least twenty-five (25) percent of all personnel.

(4) A personnel record shall be kept on each staff member and shall contain ~~[the following items]:~~

- (a) Name and address;
- (b) Verification of all training and experience, including licensure, certification, registration, or renewals;
- (c) Verification of submission to the background check requirements of subsections (1), (2), and (3) of this section;
- (d) Performance appraisals conducted no less than annually; and
- (e) Employee incident reports.

Section 7~~[8]~~ Quality Assurance and Utilization Review. (1) The residential crisis stabilization unit shall have a quality assurance and utilization review program designed to:

- (a) Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and
 - (b) Provide an effective mechanism for review and evaluation of the service needs of each client.
- (2) The need for continuing services shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:
- (a) Discharge;
 - (b) Transfer; or
 - (c) Referral to another service provider, if appropriate.

Section 8~~[9]~~ Client Grievance Policy. The residential crisis stabilization unit shall have written policies and procedures governing client grievances, which shall include ~~[the following]:~~

- (1) A process for filing a written client grievance;
- (2) An appeals process with time frames for filing and responding to a grievance in writing;
- (3) Protection for a client from interference, coercion, discrimination, or reprisal; and
- (4) Conspicuous posting of the grievance procedures in a public area to inform a client of:
 - (a) His or her right to file a grievance;
 - (b) The process for filing a grievance; and
 - (c) The address and telephone number of the cabinet's ombudsman.

Section 9~~[10]~~ Services and Staffing. (1) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit shall provide ~~[the following services]:~~

- (a) Screening as established by 907 KAR 15:070, Section 3(2)(a);
- (b) Assessment as established by 907 KAR 15:070, Section 3(2)(b);
- (c) **Service [Treatment]** planning as established by 907 KAR 15:070, Section 3(2)(e);
- (d) Individual ~~[outpatient]~~ therapy as established by 907 KAR 15:070, Section 3(2)(c);
- (e) Group ~~[outpatient]~~ therapy as established by 907 KAR 15:070, Section 3(2)(d); and
- (f) Psychiatric services.

(2) An entity licensed under this administrative regulation to operate a residential crisis stabilization unit may provide:

- (a) Family therapy as established by 907 KAR 15:070, Section 3(2)(f); ~~[or]~~
- (b) Peer support by a peer support specialist as established by 907 KAR 15:070, Section 3(2)(g); or

(c) Medication assisted treatment, excluding methadone-based treatment, as established by 907 KAR 15:070, Section 3(2)(i).

(3)(a) Except as provided by paragraph (b) of this subsection, the services identified in subsection (1) and (2)(a) of this section shall be delivered by a behavioral health professional or a behavioral health professional under clinical supervision.

(b) In addition to the professionals identified in paragraph (a) of this subsection, the services identified in subsection (1)(a), (b), (d), and (e) and subsection (2)(a) of this section may be provided by a certified alcohol and drug counselor or licensed clinical alcohol and drug counselor.

(c) 1. A residential crisis stabilization unit shall have access to a board-certified or board-eligible psychiatrist twenty-four (24) hours per day, seven (7) days per week.

2. The psychiatrist may serve more than one (1) residential crisis stabilization unit and be available through telehealth consultation.

(d) The psychiatrist shall be available to evaluate, provide treatment, and participate in treatment planning.

(4) If a crisis stabilization program serves adults with a severe mental illness or substance use disorder and children with severe emotional disabilities:

- (a) The programs shall not be located on the same campus; and
- (b) The children's program shall serve clients:
 - 1. Under the age of eighteen (18); or
 - 2. Up to the age of twenty-one (21) if developmentally appropriate for the client.

(5) A residential crisis stabilization unit shall:

- (a) Provide treatment for acute withdrawal as established by 907 KAR 15:070, Section 3(2)(h), if appropriate;

- (b) Complete a mental status evaluation and physical health questionnaire of the client upon admission;
- (c) Have written policies and procedures for:
 - 1. Crisis intervention; and
 - 2. Discharge planning, which shall begin at the time of admission and aftercare planning processes;

(d) Make referrals for physical health services to include diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the client's stay in the residential crisis stabilization unit or identified during the admission assessment;

(e) Have a description of linkages with behavioral health services organizations licensed under 902 KAR 20:430 or other programs, including entities licensed as an AODE, that [which]:

- 1. Address identified needs and achieve goals specified in the treatment plan; and
 - 2. Help promote continuity of care after discharge;
- (f) Have at least one (1) direct-care staff member assigned direct-care responsibility for:

- 1. Every four (4) clients during normal waking hours; and
 - 2. Every six (6) clients during normal sleeping hours;
- (g) Ensure that administrative management of the unit is provided by the unit's executive director;

- (h) Provide a training program for direct-care staff pertaining to:
- 1. The care of clients in a residential crisis stabilization unit;
 - 2. Detection and reporting of abuse, neglect, or exploitation;
 - 3. Emergency and safety procedures;
 - 4. Behavior management, including de-escalation training;
 - 5. Physical management procedures and techniques;
 - 6. Suicide prevention and care; and
 - 7. Trauma informed care; and

- (i) Assure that each client shall be:
- 1. In need of short-term behavior management and at risk of placement in a higher level of care;
 - 2. Able to take care of his or her own personal needs, if an adult;
 - 3. Medically able to participate in services; and
 - 4. Served in the least restrictive environment available in the community.

(6) If providing treatment for acute withdrawal in accordance with subsection (5) of this section, a residential crisis stabilization unit shall:

(a) Meet the requirements established by 907 KAR 15:070, Section 2(1)(r); and

(b) Possess an appropriate level of care certification as established by 907 KAR 15:070, Section 3(6).

Section ~~10~~[44-] Client Records. (1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be current, dated, signed, and indexed according to the service received.

(3) Each client record shall contain:

(a) An identification sheet, including the client's name, address, date of birth, gender, marital status, expected source of payment, and referral source;

(b) Information on the purpose for seeking a service;

(c) If applicable, consent via signature of an appropriate family member or guardian [~~members or guardians~~] for admission, evaluation, and treatment;

(d) Mental status evaluation and physical health questionnaire of the client taken upon admission;

(e) Staff notes for all services provided;

(f) Documentation of treatment planning, including diagnosis and all services to be provided; and

(g) Documentation of medication prescribing and monitoring used in treatment.

(4) Ownership.

(a) Client records shall be the property of the residential crisis stabilization unit.

(b) The original client record shall not be removed from the unit except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed. Use and disclosure shall be as established by subsection (6) of this section.

(5) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and be retained for at least the longer of:

(a) [~~Retained for~~] Six (6) years; or

(b) If a minor, three (3) years after the client reaches the age of majority pursuant to KRS 2.015[~~under state law, whichever is the longest~~].

(6) Confidentiality and Security: Use and Disclosure.

(a) The residential crisis stabilization unit shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 through[~~to~~] 1320d-8, and 45 C.F.R. Parts 160 and 164, [~~as amended,~~] including the security requirements mandated by [~~subparts A and C of~~] 45 C.F.R. Part 164, Subparts A and C, or as provided by applicable federal or state law, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The residential crisis stabilization unit may use and disclose client records. Use and disclosure shall be as established or required by:

1. HIPAA, 42 U.S.C. 1320d-2 through[~~to~~] 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) A residential crisis stabilization unit may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 through[~~to~~] 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

Section ~~11~~[42-] Client Rights. (1) A residential crisis stabilization unit shall have written policies and procedures to ensure that the rights of a client are protected, including a statement of rights and responsibilities, which shall be:

(a) Provided at the time of admission:

1. To the client; or

2. If the client is a minor or incapacitated, to the client, client's parent, guardian, or other legal representative;

(b) Read to the client or client's parent, guardian, or other legal representative if requested or if either cannot read;

(c) Written in language that is understandable to the client;

(d) Conspicuously posted in a public area of the facility; and

(e) Cover the [following]:

1. [~~The~~] Right to treatment, regardless of race, religion, or ethnicity;

2. [~~The~~] Right to recognition and respect of personal dignity in the provision of all treatment and care;

3. [~~The~~] Right to be provided treatment and care in the least restrictive environment possible;

4. [~~The~~] Right to an individualized plan of care;

5. [~~The~~] Right of the client, including the client's parent, guardian, or other legal representative[~~parents or guardian~~] if the client is a minor or incapacitated, to participate in treatment planning;

6. [~~The~~] Nature of care, procedures, and treatment provided;

7. [~~The~~] Right to an explanation of risks, side effects, and benefits of all medications and treatment procedures used;

8. [~~The~~] Right to be free from verbal, sexual, physical, or mental abuse; and

9. [~~The~~] Right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the client refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or in accordance with professional standards, to terminate the relationship with the client upon reasonable notice.

(2) A residential crisis stabilization unit's written policies and procedures concerning client rights shall assure and protect the client's personal privacy within the constraints of his or her plan of care, including:

(a) Visitation by family or significant others in a suitable area of the facility; and

(b) Telephone communications with family or significant others at a reasonable frequency.

(3)(a) If a privacy right is limited, a full explanation shall be given to the client or the client's parent, [~~or~~] guardian, or other legal representative if the client is a minor or incapacitated.

(b) Documentation shall be included in the client's record of any privacy limitation.

(4) Information shall be provided to the client, or the client's parent, [~~or~~] guardian, or other legal representative if the client is a minor or incapacitated, regarding the use and disposition of special observation and audio visual techniques, which may include [~~the following~~]:

(a) One (1) way vision mirror;

(b) Audio recording;

(c) Video tape recording;

(d) Television;

(e) Movie; or

(f) Photographs.

(5)(a) If the residential crisis stabilization unit serves children as established[~~described~~] in Section ~~9~~[40](4)(b) of this administrative regulation, written policy and procedures shall be developed in consultation with professional and direct-care staff to provide for behavior management of residents, including the use of a time-out room.

(b)1. Behavior management techniques:

a. Shall be explained fully to each client and, if the client is a minor or incapacitated, the client's parent, guardian, or other legal representative; and

b. May include time out or personal restraint.

2. Prone holds, chemical restraint, and mechanical restraint shall be prohibited in a residential crisis stabilization unit.

(c) The unit shall prohibit cruel and unusual disciplinary measures including [~~the following~~]:

1. Corporal punishment;

2. Forced physical exercise;

3. Forced fixed body positions;

4. Group punishment for individual actions;

5. Verbal abuse, ridicule, or humiliation;

6. Denial of three (3) balanced nutritional meals per day;

7. Denial of clothing, shelter, bedding, or personal hygiene needs;

8. Denial of access to educational services;

9. Denial of visitation, mail, or phone privileges for punishment;

10. Exclusion of the resident from entry to his or her assigned living unit; and

11. Personal restraint or seclusion as a punishment or employed for the convenience of staff.

(d) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(6) If personal restraint is used as a safe behavioral management technique, the residential crisis stabilization unit shall have a policy that[which] shall:

(a) Establish[Describe] criteria for appropriate use of personal restraint;

(b) Establish[Describe] documentation requirements; and

(c) Ensure that staff who implement the use of personal restraint shall:

1. Have documented training in the proper use of the procedure used;

2. Be certified in physical management by a nationally-recognized training program in which certification is obtained through skilled-out testing; and

3. Receive annual training and recertification in crisis intervention and behavior management.

Section 12.[43.] Reports of Abuse, Neglect, or Exploitation. (1) A residential crisis stabilization unit shall have written policies that[which] assure:

(a) The reporting of cases of abuse, neglect, or exploitation of adults and children to the cabinet pursuant to KRS Chapters 209 and 620; and

(b) That a resident may file a complaint with the cabinet concerning resident abuse, neglect, or exploitation.

(2) The unit shall have evidence that all allegations of abuse, neglect, or exploitation are thoroughly investigated internally[,] and shall prevent further potential abuse while the investigation is in progress.

Section 13.[44.] Medication Prescribing and Monitoring in a Residential Crisis Stabilization Unit. (1) Medication prescribing and monitoring shall be under the direction of a licensed psychiatrist, a licensed physician supervised by a psychiatrist, or an APRN certified in psychiatric-mental health nursing practice who meets the requirements established in 201 KAR 20:057.

(2) Prescriptions concerning medication shall not exceed an order for more than five (5) refills.

(3) Medication prescribing and monitoring used in treatment shall be recorded in the staff notes and on a special medications chart in the client record.

(4) A copy of the prescription shall be kept in the client record.

(5) A blood or other laboratory test or examination shall be performed in accordance with accepted medical practice on each client receiving medication prescribed or administered by the residential crisis stabilization unit staff.

(6) Drug supplies shall be stored under proper sanitary, temperature, light, and moisture conditions.

(7) Medication kept by the unit shall be properly labeled.

(8) A medication shall be stored in the originally received container unless transferred to another container by a pharmacist or another person licensed to transfer the medication.

(9) Medication kept in the unit shall be kept in a locked cabinet.

(10) A controlled substance shall be kept under double lock (for example, in a locked box in a locked cabinet).

(11) There shall be a controlled substances record, in which is recorded:

(a) The name of the client;

(b) The date, time, dosage, balance remaining, and method of administration of each controlled substance;

(c) The name of the prescribing physician or other ordering practitioner acting within the scope of his or her license to practice; and

(d) The name of the nurse who administered it[,] or staff who supervised the self-administration.

(12) Access to the locked cabinet shall be restricted to a

designated medication nurse or other authorized personnel.

(13) Medication to be self-administered shall be made available to the client at the time of administration.

Section 14.[45.] Facility Requirements. (1) Living Unit. A living unit shall be located within a single building in which there is at least 120 square feet of space for each resident in the facility.

(2) Bedrooms.

(a) More than four (4) clients shall not sleep in the same[a] bedroom.

(b) A bedroom shall be equipped with a bed for each client.

(c) A bed shall:

1. Be at least thirty-six (36) inches wide and at least five (5) feet in length;

2. Be long and wide enough to accommodate the client's size;

3. Have a mattress cover, two (2) sheets, a pillow, and bed covering to keep the client comfortable;

4. Be equipped with a support mechanism and a clean mattress; and

5. Be placed so that a client shall not experience discomfort because of proximity to a radiator or heat outlet, or exposure to a draft.

(d) There shall be separate sleeping quarters for males and females.

(e) A client shall not be housed in a room, a detached building, or other enclosure that has not previously been inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction.

(3) Bathrooms.

(a) For every eight (8) residents, each residential crisis stabilization unit shall have at least one (1):

1. Wash basin with hot and cold water;

2. Bath or shower with hot and cold water; and

3. Flush toilet.

(b) If separate toilet and bathing facilities are not provided, males and females shall not be permitted to use those facilities at the same time.

(4) Living area.

(a) The living area shall provide comfortable seating for all clients housed within the residential crisis stabilization unit.

(b) Each living unit shall be equipped with a:

1. Working sink; and

2. Stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.

(5) There shall be adequate lighting, heating, heated water, and ventilation.

(6) There shall be space for a client to store personal belongings, including a receptacle where personal property may be stored and locked.

(7) The residential crisis stabilization unit shall be kept in good repair, neat, clean, free from accumulations of dirt and rubbish, and free from foul, stale, and musty odors.

(8) The residential crisis stabilization unit shall be kept free from insects and rodents with their harborages eliminated.

(9) The residential crisis stabilization unit shall establish an infection control system that[which] includes training personnel on proper hygiene related to infections prevalent among alcohol and other drug abusers.

(10) Services shall be provided in an area where clients are ensured privacy and confidentiality.

Section 15.[46.] Facility Specifications. (1) A residential crisis stabilization unit shall:

(a) Be of safe and substantial construction;

(b) Be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation;

(c) Be approved by the State Fire Marshal's office prior to initial licensure or if the unit changes location; and

(d) Meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and 815 KAR 7:120.

(2) A residential crisis stabilization unit shall:

(a) Have a written emergency plan and procedures for meeting

potential disasters such as fires or severe weather;

(b) Post the emergency plan conspicuously in a public area of the unit and provide a copy to all personnel;

(c) Provide training for all personnel on how to report a fire, extinguish a small fire, and evacuate a building; and

(d) Practice fire drills monthly, with a written record kept of all practiced fire drills, detailing the date, time, and residents who participated.

Section 16.[47.] Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Residential Crisis Stabilization Unit if:

(a) Any person with ownership interest in the residential crisis stabilization unit has had previous ownership interest in a health care facility that had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;

(b) Any person with ownership interest in the residential crisis stabilization unit has been discontinued from participation in the Medicaid Program due to fraud or abuse of the program; or

(c) The applicant fails after the initial inspection to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2(13)(5).

(2) The cabinet shall revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the residential crisis stabilization unit to comply with the provisions of this administrative regulation;

(b) The residential crisis stabilization unit fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2(13)(5); or

(c) The residential crisis stabilization unit is terminated from participation in the Medicaid Program pursuant to 907 KAR 1:671.

(3) The denial or revocation of a residential crisis stabilization unit's license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall state~~set forth~~ the particular reasons for the action.

(4) The denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(5) Urgent action to suspend a license.

(a) The cabinet shall take urgent action to suspend a residential crisis stabilization unit's license if the cabinet has probable cause to believe that the continued operation of the unit would constitute an immediate danger to the health, welfare, or safety of its residents.

(b)1. The residential crisis stabilization unit shall be served with notice of the hearing on the urgent suspension to be held no sooner than twenty (20) days from the delivery of the notice.

2. Notice of the urgent suspension shall state~~set forth~~ the particular reasons for the action.

(6) Notice of a hearing on an urgent suspension shall be served on the residential crisis stabilization unit by certified mail, return receipt requested, or by personal service.

(7)(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the urgent suspension.

(b) The urgent suspension shall be affirmed if there is substantial evidence of an immediate danger to the health, safety, or welfare of the residents.

(8) The decision rendered under subsection (7) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to circuit court.

(9) If the cabinet issues an urgent suspension, the cabinet shall take action to revoke the residential crisis stabilization unit's license pursuant to subsection (3) of this section if:

(a) The facility fails to attend the expedited hearing; or

(b) The decision rendered under subsection (7) of this section affirms that there is substantial evidence of an immediate danger to the health, safety, or welfare of the residents.

(10) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 17.[48.] Incorporation by Reference. (1) The OIG 20:440, "Application for License to Operate a Residential Crisis Stabilization Unit", October 2014 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, March 8, 2021)

902 KAR 45:190. Hemp-derived cannabinoid ~~[cannabidiol]~~ products; packaging and labeling requirements.

RELATES TO: KRS 217.015, ~~[217.037,]~~217.025, 217.035, 217.037, 217.155, 260.850

STATUTORY AUTHORITY: KRS 217.125, 217.127, 217.135

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) authorizes~~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 217.005 through~~to~~ 217.215. KRS 217.125(2) requires the secretary to provide by administrative regulation a schedule of fees for permits to operate and for inspection activities carried out by the cabinet pursuant to KRS 217.025 through 217.390. KRS 217.135 authorizes the secretary to establish food standards by administrative regulation including a reasonable definition, standard of identity, and designation of optional ingredients that shall be named on the label. This administrative regulation establishes the registration process to utilize hemp-derived cannabinoid~~[cannabidiol]~~ products in foods and cosmetics, the labeling and packaging requirements for products containing hemp-derived cannabinoid~~[cannabidiol]~~, and methods for use of hemp-derived cannabinoid~~[cannabidiol]~~ as an additive to food products.

Section 1. Definitions. (1) "Approved source" means a Kentucky hemp grower, processor, or handler licensed by the Kentucky Department of Agriculture, or an out-of-state~~out of state~~ hemp grower, processor, or handler who is duly authorized to produce hemp under the laws of the applicable~~their~~ jurisdiction.

(2) "Cabinet" is defined by KRS 217.015(3).

(3) "Cannabinoid"~~[(4) "Cannabidiol" or "CBD"]~~ means a non-intoxicating compound~~[cannabinoid]~~ found in the hemp plant *Cannabis sativa*.

(4)~~[(2)]~~ "Cosmetic" is defined by KRS 217.015(7).

(5)~~[(3)]~~ "Department" means the Kentucky Department for Public Health.

(6)~~[(4)]~~ "Food service establishment" is defined by KRS 217.015(21).

(7) "Hemp" is defined by KRS 260.850(5).

(8)~~[(5)]~~ "Home-based processor" is defined by KRS 217.015(56).

(9)~~[(6)]~~ "Person" is defined by KRS 217.015(32).

Section 2. Permits. (1) A person located in Kentucky seeking to manufacture, market, sell, or distribute a hemp-derived ~~[CBD]~~ ingestible or cosmetic cannabinoid product shall submit an Application for Permit to Operate a Food Plant or Cosmetic Manufacturing Plant, DFS-260, incorporated by reference in 902

KAR 45:160, to the department.

(2) The permit shall be:

- (a) Nontransferable in regards to person or address; and
- (b) Renewed annually.

(3) The fee shall be paid in accordance with:

- (a) 902 KAR 45:180, for a food processing establishment;
- (b) 902 KAR 45:180, for a cosmetic manufacturer; and
- (c) 902 KAR 45:110, Section 1(3) ~~[(4),]~~ and ~~(6) [(5)],~~ for a food service establishment.

(4) Ingestible hemp-derived **cannabinoid** products shall not be manufactured, marketed, sold, or distributed by a home-based processor.

Section 3. Product **Packaging and Labeling**. (1) Each hemp-derived **cannabinoid [CBD]** product manufactured, marketed, sold, or distributed in the Commonwealth shall be **packaged and labeled** in accordance with KRS 217.037 and this administrative regulation.

(2) **Except as established in subsection (3) of this section,** an ingestible or cosmetic product label shall include, in a print no less than six (6) point font, the following information:

(a) A statement of identity or common product name that shall be stated upon the principal display panel of the label;

(b) The net quantity of contents expressed in both standard English and metric units of measurement located in the lower thirty **(30) percent [(30%)]** of the **principal display panel of the** label parallel to the base of the container;

(c) The ingredients of the hemp-derived **cannabinoid [CBD]** product, in descending order of predominance by weight;

(d) The name of the manufacturer or distributor;

(e) A statement that the hemp-derived **cannabinoid [CBD]** product is within the federal legal limit of **zero and three-tenths (0.3) percent [of one percent (0.3%)]** delta-9 tetrahydrocannabinol;

(f) The total amount of **cannabinoid [cannabidiol]** per serving for ingestible products, or the total amount per container for cosmetic products;

(g) Suggested use instructions or directions, including serving sizes;

(h) The statement, or a similar statement, "Consult your physician or healthcare professional before use"; **and**

(i) An expiration date, if any; ~~and~~

~~(j) The Kentucky Hemp or Kentucky Proud logo or a similar marking that denotes the product was produced in Kentucky].~~

(3) An ingestible or cosmetic product that has a total area of twelve (12) square inches or less available to bear labeling shall be labeled in accordance with subsection (2) of this section, except the print may be smaller than six (6) point font but shall not measure less than 1/32 of an inch in height.

~~(4) [The labeling requirements of subsection (2) of this section shall not be printed unduly small in relation to the total area available to bear labeling in order to accommodate unrequired information such as logos, photographic representation of the product, or additional marketing copy.~~

~~(5) Each container of ingestible or cosmetic hemp-derived cannabinoid [CBD] product shall have a tamper evident seal [bear either a foil seal on the inside or a plastic sealant on the outside].~~

~~(5) [(6)] [(4)]~~ Product **packaging**, labeling or advertising material for any hemp-derived **cannabinoid [CBD]** product shall not bear any implicit or explicit health claims stating that the product can diagnose, treat, cure, or prevent any disease.

Section 4. Hemp-derived Ingestible **Cannabinoid Products [CBD product as a food additive]**. (1) Hemp-derived **cannabinoid [CBD]** may be added to an ingestible product during the manufacturing process or prior to retail sale at a food service establishment.

(2) **The hemp-derived cannabinoid shall be obtained from an approved source.**

(3) The food processor or food service establishment shall obtain a valid certificate of analysis from the approved

source and provide a copy upon inspection.

(4) Food or ingestible product shall not contain a total delta-9 tetrahydrocannabinol concentration of more than zero and three-tenths (0.3) percent [of one percent (0.3%)] on a dry weight basis or contain tetrahydrocannabinol as the primary cannabinoid.

(5) A food service establishment offering hemp-derived **cannabinoid [CBD]** products in a finished food product shall provide ~~[the following information]~~ to consumers upon request:

(a) The common name of the product;

(b) The manufacturer or distributor of the product; and

(c) A statement that the hemp-derived **cannabinoid [CBD]** product is within the federal legal limit of **zero and three-tenths (0.3) percent [to one percent (0.3%)]** delta-9 tetrahydrocannabinol.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, March 8, 2021)**

907 KAR 15:070. Coverage provisions and requirements regarding services provided by residential crisis stabilization units.

RELATES TO: KRS 205.520, 21 U.S.C. 823(q)(2), 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by residential crisis stabilization units.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a residential crisis stabilization unit that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(4) A residential crisis stabilization unit shall establish a plan of care for each recipient receiving services.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a residential crisis stabilization unit shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (3) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

(c) Be licensed as a residential crisis stabilization unit in accordance with 902 KAR 20:440;

(d) Comply with the requirements established in 902 KAR 20:440;

(e) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;
2. Demonstrated experience in serving individuals with behavioral health disorders;
3. The administrative capacity to ensure quality of services;
4. A financial management system that provides documentation of services and costs; and
5. The capacity to document and maintain individual case records;

(f) Be a community-based, residential program that offers an array of services including:

1. Screening;
2. Assessment;
3. Treatment planning;
4. Individual [outpatient] therapy;
5. Group [outpatient] therapy;
6. Psychiatric services;
7. Family [outpatient] therapy at the option of the residential crisis stabilization unit; [or]
8. Peer support at the option of the residential crisis stabilization unit;

9. Medically monitored withdrawal management if treating substance use disorders; or

10. Medication assisted treatment if treating substance use disorders;

(g) Provide services in order to:

1. Stabilize a crisis and divert an individual from a higher level of care;
2. Stabilize an individual and provide treatment for acute withdrawal, if applicable; and
3. Re-integrate an individual into the individual's community or other appropriate setting in a timely fashion;

(h) Not be part of a hospital;

(i) Be used when an individual:

1. Is experiencing a behavioral health crisis that cannot be safely accommodated within the individual's community; and
2. Needs overnight care that is not hospitalization;

(j) Except as established in subsection (2)(a) of this section, not contain more than sixteen (16) beds;

(k) Except as established in subsection (2)(b) of this section, not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate;

(l) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;

(m) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act;

(n) Have the capacity to employ staff authorized to provide treatment services in accordance with this section and to coordinate the provision of services among team members;

(o) Have the capacity to provide the full range of residential crisis stabilization services as stated in Section 3(2) of this administrative regulation and on a twenty-four (24) hour a day, seven (7) day a week, every day of the year basis;

(p) Have access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; [and]

(q) Have knowledgeable staff regarding mental health, substance use, or co-occurring disorders based on the population being served; and

(r) For the treatment or stabilization of withdrawal management symptoms for substance use disorder or co-occurring disorders;

1. Meet all requirements established by the most recent version of the American Society for Addiction Medicine (ASAM) relating to level of care certification for medically monitored intensive inpatient services for adults and medically monitored high-intensity inpatient services for adolescents, currently described by ASAM as a 3.7 level of

care; and

2.[.] Have:

a. A planned and structured regimen of twenty-four (24) hour professionally directed evaluation, observation, medical monitoring, and addiction treatment;

b. Twenty-four (24) hour nursing care, including a comprehensive assessment at admission by a registered nurse;

c. Twenty-four (24) hour access to a psychiatrist, including availability within eight (8) hours by telephone and within twenty-four (24) hours in person;

d. Twenty-four (24) hour access to a physician, advanced practice registered nurse, or a physician assistant, to include:

(i) An assessment and physical examination in person within twenty-four (24) hours of admission, and after admission as medically necessary; and

(ii) Responsibility for overseeing the treatment of each recipient; and

e. Clinical staff:

(i) Knowledgeable about the biological and psychosocial dimensions of addiction and other behavioral health disorders with training in behavior management techniques and evidence-based practices; and

(ii) Able to provide twenty-four (24) hour professionally directed evaluation, care, and treatment services[disorders].

(2) If every recipient receiving services in the:

(a) Single unit is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in subsection (1)(j) of this section shall not apply; or

(b) Multiple units is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in subsection (1)(k) of this section shall not apply.

(3) In accordance with 907 KAR 17:015, Section 3(3), a residential crisis stabilization unit ~~that~~[which] provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

Section 3. Covered Services. (1)(a) Except as specified in the requirements stated for a given service, the services covered may be provided for:

1. A mental health disorder;
2. A substance use disorder; or
3. Co-occurring ~~mental health and substance use~~ disorders.

(b) Residential crisis stabilization services shall be provided in a residential crisis stabilization unit.

(2) Residential crisis stabilization services shall include the services established in this subsection.[:]

~~(a) A screening provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A licensed clinical social worker;~~
- ~~4. A licensed professional clinical counselor;~~
- ~~5. A licensed professional art therapist;~~
- ~~6. A licensed marriage and family therapist;~~
- ~~7. A physician;~~
- ~~8. A psychiatrist;~~
- ~~9. An advanced practice registered nurse; or~~
- ~~10. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;~~

~~(b) An assessment provided by:~~

- ~~1. A licensed psychologist;~~
 - ~~2. A licensed psychological practitioner;~~
 - ~~3. A licensed clinical social worker;~~
 - ~~4. A licensed professional clinical counselor;~~
 - ~~5. A licensed professional art therapist;~~
 - ~~6. A licensed marriage and family therapist;~~
 - ~~7. A physician;~~
 - ~~8. A psychiatrist;~~
 - ~~9. An advanced practice registered nurse;~~
 - ~~10. A licensed behavior analyst; or~~
 - ~~11. A behavioral health practitioner under supervision;~~
- (c) Individual outpatient therapy or group outpatient therapy

provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A licensed behavior analyst; or
11. A behavioral health practitioner under supervision;

(d) Treatment planning provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A licensed clinical social worker;
4. A licensed professional clinical counselor;
5. A licensed professional art therapist;
6. A licensed marriage and family therapist;
7. A physician;
8. A psychiatrist;
9. An advanced practice registered nurse;
10. A licensed behavior analyst; or
11. A behavioral health practitioner under supervision except

for a certified alcohol and drug counselor;

(e) Psychiatric services provided by:

1. A psychiatrist; or
2. An APRN; or

(f) At the option of the residential crisis stabilization unit:

1. Family outpatient therapy provided by:

- a. A licensed psychologist;
- b. A licensed psychological practitioner;
- c. A licensed clinical social worker;
- d. A licensed professional clinical counselor;
- e. A licensed professional art therapist;
- f. A licensed marriage and family therapist;
- g. A physician;
- h. A psychiatrist;
- i. An advanced practice registered nurse; or
- j. A behavioral health practitioner under supervision except for

a licensed assistant behavior analyst; or

2. Peer support provided by a peer support specialist working under the supervision of:

- a. An approved behavioral health service provider; or
- b. A certified alcohol and drug counselor.

(3)(a) A screening shall:

1. Establish the need for a level of care evaluation to determine the most appropriate and least restrictive service to maintain the safety of the individual who may have a mental health disorder, substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder; [and]

3. Establish the need for an in-depth assessment of the number and duration of risk factors including:

- a. Imminent danger and availability of lethal weapons;
- b. Verbalization of suicidal or homicidal risk;
- c. Need of immediate medical attention, including medically

monitored withdrawal management needs;

d. Positive and negative coping strategies;

e. Lack of family or social supports;

f. Active psychiatric diagnosis; or

g. Current drug and alcohol use;

4. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the practitioner to:

a. Establish the presence or absence of a mental health disorder, a substance use disorder, or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan; [and]

4. Not include psychological or psychiatric evaluations or assessments;

5. If being made for the treatment of a substance use disorder, utilize a multi-dimensional assessment that complies with The ASAM Criteria, and shall address at a minimum:

a. Acute intoxication or withdrawal potential;

b. Biomedical conditions and complications;

c. Emotional, behavioral, or cognitive conditions and complications;

d. Readiness to change;

e. Relapse;

f. Continued use or continued problem potential; and

g. Recovery and living environment; and

6. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(c) Individual [outpatient] therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; or

b. Restoration of a recipient to their best possible functional level[Recovery] from a substance use disorder, a mental health disorder, or co-occurring disorders;

2. Consist of:

a. A face-to-face, or via telehealth as appropriate pursuant to the most recent version of The ASAM Criteria and 907 KAR 3:170, one-on-one[one (1) on one (1)] encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified crisis treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; [and]

4. Not exceed three (3) hours per day unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(d)1. Group [outpatient] therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified crisis treatment plan;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Restoration of a recipient to their best possible functional level[Recovery] from a substance use disorder, a mental health disorder, or co-occurring disorders;

c. Consist of a face-to-face, or via telehealth as appropriate pursuant to the most recent version of The ASAM Criteria and 907 KAR 3:170, behavioral health therapeutic intervention

provided in accordance with the recipient's identified crisis treatment plan;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's crisis treatment plan;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day per recipient unless

additional time is medically necessary.

2. The group shall have a:

- a. Deliberate focus; and
- b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. The group shall be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(e)1. Service[Treatment] planning shall:

a. Involve assisting a recipient in creating an individualized plan for services needed;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

- a. Shall be directed by the recipient;
- b. Shall include practitioners of the recipient's choosing; and
- c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

3. A service plan shall be completed by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(f)[4.] Family [outpatient] therapy shall:

1. Consist of a face-to-face, or via telehealth as appropriate pursuant to the most recent version of The ASAM Criteria and 907 KAR 3:170, behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment;[-]

2. [Family outpatient therapy shall:]

a. Be provided to promote:

(i) The health and wellbeing of the individual; or

(ii) Restoration of a recipient to their best possible functional level[Recovery] from a substance use disorder, a mental health disorder, or co-occurring disorders; and

b. Not exceed three (3) hours per day per individual unless additional time is medically necessary; and

3. Be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(g)1. Peer support services provided by a peer support specialist working under the supervision of an approved behavioral health practitioner shall:

a. Be social and emotional support that is provided by an individual who is experiencing a mental health disorder, a substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided by a self-identified consumer, parent, or family member:

(i) Of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services; and

(ii) Who has been trained and certified in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

f. Be coordinated within the context of a comprehensive, individualized treatment plan developed through a person-centered planning process;

g. Be identified in each recipient's treatment plan; and

h. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's treatment plan.

2. To provide peer support services, a residential crisis stabilization unit shall:

a. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 2:230, or 908 2:240;

b. ~~[Use an approved behavioral health services provider or certified alcohol and drug counselor to supervise peer support specialists;~~

~~e.]~~Have the capacity to coordinate the provision of services among team members; ~~[and]~~

~~c.].~~ Have the capacity to provide on-going continuing education and technical assistance to peer support specialists;

~~d. Require individuals providing peer support services to recipients to provide no more than thirty (30) hours per week of direct recipient contact; and~~

~~e. Require peer support services provided to recipients in a group setting to not exceed eight (8) individuals within any group at one (1) time.~~

(h)1. Medically monitored withdrawal management services for substance use disorder shall:

a. Meet the service criteria for medically monitored [intensive] inpatient services [for adults and medically monitored high-intensity inpatient services for adolescents] in accordance with the most current version of The ASAM Criteria; and

b. Comply with services pursuant to the requirements of 902 KAR 20:440[20:441].

2. A recipient who is receiving withdrawal management services shall:

a. Meet the current dimensional admissions criteria for medically monitored inpatient withdrawal management [level of care] as found in the most current version of The ASAM Criteria; and

b. Not require the full resources of an acute care hospital or a medically managed inpatient treatment program.

3. Medically monitored withdrawal management services shall be provided by:

a. A physician or psychiatrist;

b. A physician assistant;

c. An advanced practice registered nurse; or

d. Any other approved behavioral health practitioner or nurse with oversight by a physician, advanced practice registered nurse, or a physician assistant.

(i)1. Medication assisted treatment shall be available per patient choice for the treatment of a substance use disorder or co-occurring disorders.

2. Medication assisted treatment shall be provided by a provider who:

a. Is:

(i) A physician licensed to practice medicine under KRS Chapter 311;

(ii) An advanced practice registered nurse (APRN); or

(iii) A physician assistant licensed to practice medicine under KRS Chapter 311[who has appropriately updated department provider enrollment information];

b. Meets standards in accordance with 201 KAR 9:270 or 201 KAR 20:065;

c. Maintains a current waiver under 21 U.S.C 823(g)(2) to prescribe buprenorphine products, including any waiving or expansion of buprenorphine prescribing authority by the federal government; and

d. Has experience and knowledge in addiction medicine.

(3) For those recipients being treated for a substance use disorder, care coordination shall include at minimum:

(a) Referring the recipient to appropriate community services;

(b) Facilitating medical and behavioral health follow-ups;

(c) Linking to appropriate levels of substance use treatment within the continuum in order to provide on-going support; and

(d) Facilitating medication assisted treatment as necessary, per patient choice, if the medication is not offered on-site.

(4) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

(5) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(6) After July 1, 2022[2024], if treating substance use disorders, the facility shall possess an appropriate ASAM level of care certification for medically monitored intensive inpatient service in accordance with the most current version of The ASAM Criteria.

(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

Section 4. Additional Limits and Non-covered Services or Activities. (1) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the residential crisis stabilization unit;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face";

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(2) Residential crisis stabilization services shall not include:

(a) Room and board;

(b) Educational services;

(c) Vocational services;

(d) Job training services;

(e) Habilitation services;

(f) Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;

(g) Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;

(h) Recreational activities;

(i) Social activities; or

(j) Services required to be covered elsewhere in the state plan.

(3)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a residential crisis stabilization service from a community mental health center, the department shall not reimburse for the same service provided to the same recipient during the same time period by a residential

crisis stabilization unit.

Section 6. Records Maintenance, Documentation, Protection, and Security. A residential crisis stabilization unit shall maintain a current health record for each recipient in accordance with 902 KAR 20:440.

Section 7. Medicaid Program Participation Compliance. (1) A residential crisis stabilization unit shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a residential crisis stabilization unit receives any duplicate payment or overpayment from the department, regardless of reason, the residential crisis stabilization unit shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the residential crisis stabilization unit accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the residential crisis stabilization unit.

(b)1. A residential crisis stabilization unit may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Residential crisis stabilization unit makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1. of this paragraph, the:

a. Residential crisis stabilization unit shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the residential crisis stabilization unit regarding the service.

(4)(a) The signature of the residential crisis stabilization unit's staff or representative shall indicate that the residential crisis stabilization unit attests that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a residential crisis stabilization unit receives a request from the department or its designee to provide a claim, related information, related documentation, or record for auditing purposes, the residential crisis stabilization unit shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider fraud or abuse; and compliance with this administrative regulation and state and federal law.

2. Willful abuse by a residential crisis stabilization unit shall result in the suspension or termination of the residential crisis stabilization unit from Medicaid Program participation.

Section 8. Third Party Liability. A residential crisis stabilization

unit shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A residential crisis stabilization unit that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the residential crisis stabilization unit's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the residential crisis stabilization unit's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

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**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, March 8, 2021)**

907 KAR 15:080. Coverage provisions and requirements regarding [outpatient] chemical dependency treatment center services.

RELATES TO: KRS 205.520, 205.622, 309.0831, 369.101-369.120, 20 U.S.C. 1400, 21 U.S.C. 823(g)(2), 29 U.S.C. 701, 42 U.S.C. 290ee-3, 1320d-2-1320d-8, 1396a(a)(10)(B), 1396a(a)(23), 12101, 42 C.F.R. Part 2, 431.17, 435.1010, 45 C.F.R. 160, 164

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet

for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program outpatient and inpatient chemical dependency treatment center services.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a chemical dependency treatment center that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct[~~Face-to-face~~] contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a recipient under the age of twenty-one (21) years if the collateral outpatient therapy is in the recipient's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present; or

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an[~~a face-to-face~~] encounter.

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A chemical dependency treatment center shall establish a plan of care for each recipient receiving services from a chemical dependency treatment center.

(b) A plan of care shall meet the treatment plan requirements established in 902 KAR 20:160.

Section 2. Provider Participation. (1)(a) To be eligible to provide services under this administrative regulation, a chemical dependency treatment center shall:

1. Be currently enrolled as a provider in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

2. Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

3. Be licensed as a chemical dependency treatment center to provide outpatient and inpatient behavioral health services in accordance with 902 KAR 20:160; and

4. Have:

a. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

b. Documented experience in serving individuals with mental health, substance use, or co-occurring[~~behavioral health~~] disorders;

c. The administrative capacity to ensure quality of services;

d. A financial management system that provides documentation of services and costs; and

e. The capacity to document and maintain individual health records.

(b) The documentation referenced in paragraph (a)4.b. of this subsection shall be subject to audit by:

1. The department or its designee;

2. The Cabinet for Health and Family Services, Office of Inspector General;

3. A managed care organization, if the chemical dependency treatment center is enrolled in its network;

4. The Centers for Medicare and Medicaid Services;

- 5. The Kentucky Office of the Auditor of Public Accounts; or
- 6. The United States Department of Health and Human Services, Office of the Inspector General.

(2) In accordance with 907 KAR 17:015, Section 3(3), a chemical dependency treatment center ~~that~~^[which] provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A chemical dependency treatment center shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

(4)(a) Except as provided by paragraph (b) of this subsection, a chemical dependency treatment center shall possess accreditation, within one (1) year of initial enrollment, by one (1) of the following:

- 1. The Joint Commission;
- 2. The Commission on Accreditation of Rehabilitation Facilities;
- 3. The Council on Accreditation; or
- 4. A nationally recognized accreditation organization.

(b) The department shall grant a one (1) time extension to a chemical dependency treatment center that requests a one (1) time extension to complete the accreditation process, if the request is submitted at least ninety (90) days prior to expiration of provider enrollment.

Section 3. Covered Services.

(1) Reimbursement shall not be available for services performed within a chemical dependency treatment program by a:

- (a) Licensed behavior analyst;
- (b) Licensed assistant behavior analyst;
- (c) Registered behavior technician; or
- (d) Community support associate.

(2) The services covered may be provided for a substance use disorder or for co-occurring disorders.

~~(3)~~⁽²⁾ The [following] services listed in this subsection shall be covered under this administrative regulation in accordance with the requirements established in this subsection.]:

~~(a) A screening, crisis intervention, or intensive outpatient program service provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A certified psychologist with autonomous functioning;~~
- ~~4. A licensed clinical social worker;~~
- ~~5. A licensed professional clinical counselor;~~
- ~~6. A licensed professional art therapist;~~
- ~~7. A licensed marriage and family therapist;~~
- ~~8. A physician;~~
- ~~9. A psychiatrist;~~
- ~~10. An advanced practice registered nurse;~~
- ~~11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;~~
- ~~12. A certified psychologist working under the supervision of a board-approved licensed psychologist;~~
- ~~13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or~~
- ~~14. A behavioral health practitioner under supervision, except for a licensed assistant behavior analyst;~~

~~(b) An assessment provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A certified psychologist with autonomous functioning;~~
- ~~4. A licensed clinical social worker;~~
- ~~5. A licensed professional clinical counselor;~~
- ~~6. A licensed professional art therapist;~~
- ~~7. A licensed marriage and family therapist;~~
- ~~8. A physician;~~
- ~~9. A psychiatrist;~~
- ~~10. An advanced practice registered nurse;~~
- ~~11. A licensed behavior analyst;~~
- ~~12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;~~

~~13. A certified psychologist working under the supervision of a board-approved licensed psychologist;~~

~~14. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or~~

~~15. A behavioral health practitioner under supervision;~~

~~(c) Psychological testing provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A certified psychologist with autonomous functioning;~~
- ~~4. A licensed psychological associate working under the supervision of a board-approved licensed psychologist; or~~
- ~~5. A certified psychologist working under the supervision of a board-approved licensed psychologist;~~

~~(d) Day treatment or mobile crisis services provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A certified psychologist with autonomous functioning;~~
- ~~4. A licensed clinical social worker;~~
- ~~5. A licensed professional clinical counselor;~~
- ~~6. A licensed professional art therapist;~~
- ~~7. A licensed marriage and family therapist;~~
- ~~8. A physician;~~
- ~~9. A psychiatrist;~~
- ~~10. An advanced practice registered nurse;~~
- ~~11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;~~
- ~~12. A certified psychologist working under the supervision of a board-approved licensed psychologist;~~
- ~~13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation;~~
- ~~14. A behavioral health practitioner under supervision, except for a licensed assistant behavior analyst; or~~
- ~~15. A peer support specialist working under the supervision of an approved behavioral health services provider;~~

~~(e) Peer support provided by a peer support specialist working under the supervision of an approved behavioral health services provider;~~

~~(f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A certified psychologist with autonomous functioning;~~
- ~~4. A licensed clinical social worker;~~
- ~~5. A licensed professional clinical counselor;~~
- ~~6. A licensed professional art therapist;~~
- ~~7. A licensed marriage and family therapist;~~
- ~~8. A physician;~~
- ~~9. A psychiatrist;~~
- ~~10. An advanced practice registered nurse;~~
- ~~11. A licensed behavior analyst;~~
- ~~12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;~~
- ~~13. A certified psychologist working under the supervision of a board-approved licensed psychologist;~~
- ~~14. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or~~
- ~~15. A behavioral health practitioner under supervision;~~

~~(g) Family outpatient therapy provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A certified psychologist with autonomous functioning;~~
- ~~4. A licensed clinical social worker;~~
- ~~5. A licensed professional clinical counselor;~~
- ~~6. A licensed professional art therapist;~~
- ~~7. A licensed marriage and family therapist;~~
- ~~8. A physician;~~
- ~~9. A psychiatrist;~~
- ~~10. An advanced practice registered nurse;~~
- ~~11. A licensed behavior analyst;~~
- ~~12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;~~
- ~~13. A certified psychologist working under the supervision of a board-approved licensed psychologist;~~
- ~~14. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or~~
- ~~15. A behavioral health practitioner under supervision;~~

~~(h) Family outpatient therapy provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A certified psychologist with autonomous functioning;~~
- ~~4. A licensed clinical social worker;~~
- ~~5. A licensed professional clinical counselor;~~
- ~~6. A licensed professional art therapist;~~
- ~~7. A licensed marriage and family therapist;~~
- ~~8. A physician;~~
- ~~9. A psychiatrist;~~
- ~~10. An advanced practice registered nurse;~~
- ~~11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;~~
- ~~12. A certified psychologist working under the supervision of a board-approved licensed psychologist;~~
- ~~13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or~~
- ~~15. A behavioral health practitioner under supervision;~~

~~(i) Family outpatient therapy provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A certified psychologist with autonomous functioning;~~
- ~~4. A licensed clinical social worker;~~
- ~~5. A licensed professional clinical counselor;~~
- ~~6. A licensed professional art therapist;~~
- ~~7. A licensed marriage and family therapist;~~
- ~~8. A physician;~~
- ~~9. A psychiatrist;~~
- ~~10. An advanced practice registered nurse;~~
- ~~11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;~~
- ~~12. A certified psychologist working under the supervision of a board-approved licensed psychologist;~~
- ~~13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or~~

~~(j) Family outpatient therapy provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A certified psychologist with autonomous functioning;~~
- ~~4. A licensed clinical social worker;~~
- ~~5. A licensed professional clinical counselor;~~
- ~~6. A licensed professional art therapist;~~
- ~~7. A licensed marriage and family therapist;~~
- ~~8. A physician;~~
- ~~9. A psychiatrist;~~
- ~~10. An advanced practice registered nurse;~~
- ~~11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;~~
- ~~12. A certified psychologist working under the supervision of a board-approved licensed psychologist;~~
- ~~13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or~~

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accordance with Section 11 of this administrative regulation; or

14. A behavioral health practitioner under supervision, except for a licensed assistant behavior analyst; or

(h) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or
14. A behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(3)(a) A screening shall:

1. Determine the likelihood that an individual has a substance use disorder;
2. Not establish the presence or specific type of disorder; [and]
3. Establish the need for an in-depth assessment;
4. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and
5. Be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section; or b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the practitioner to:
 - a. Establish the presence or absence of a substance use disorder;
 - b. Determine the individual's readiness for change;
 - c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
 - d. Engage the individual in developing[the development of] an appropriate treatment relationship;
2. Establish or rule out the existence of a clinical disorder or service need;
3. Include working with the individual to develop a plan of care; [and]
4. Not include psychological or psychiatric evaluations or assessments;
5. Utilize a multidimensional assessment that complies with the most current **version[edition]** of The ASAM Criteria to determine the most appropriate level of care;
6. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and
7. Be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section; or
b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(c) Psychological testing shall:

1. Include:
 - a.] a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities;
 2. Include an[and b.] interpretation and a written report of testing results;
 3. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and
 4. Be provided by:
 - a. A licensed psychologist;
 - b. A certified psychologist with autonomous functioning;
 - c. A licensed psychological practitioner;

d. A certified psychologist under supervision; or

e. A licensed psychological associate under supervision[and 2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing].

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

- a. The recipient; or
- b. Another individual;
2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;
3. Shall be provided:

a. ~~[On-site in the facility where the outpatient behavioral health services are provided;~~
b.] As an immediate relief to the presenting problem or threat; and

b.[c.] In a one (1) on one (1)[face-to-face, one-on-one] encounter between the provider and the recipient, which is delivered either face-to-face or via telehealth if appropriate pursuant to 907 KAR 3:170;

4. Shall be followed by a referral to non-crisis services if applicable; [and]

5. May include:

- a. Further service prevention planning including[that includes]:
 - (i) Lethal means reduction for suicide risk; or
 - (ii) Substance use disorder relapse prevention; or
 - b. Verbal de-escalation, risk assessment, or cognitive therapy;

and

6. Shall be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(e) Mobile crisis services shall:

1. Be available twenty-four (24) hours per day, seven (7) days per week, every day of the year;

2. Be provided for a duration of less than twenty-four (24) hours;

3. Not be an overnight service;

4. ~~[Ensure access to a board-certified or board-eligible psychiatrist twenty-four (24) hours per day, seven (7) days per week, every day of the year;~~

3. ~~Be provided for a duration of less than twenty-four (24) hours;~~

4. ~~Not be an overnight service;~~

5.] Be a face-to-face, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170, multi-disciplinary team-based intervention in a home or community setting that ensures access to substance use disorder services and supports to:

- a. Reduce symptoms or harm; or
- b. Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;

5. ~~[6.]~~ Involve all services and supports necessary to provide:

- a. Integrated crisis prevention;
- b. Assessment and disposition;
- c. Intervention;
- d. Continuity of care recommendations; and
- e. Follow-up services;

6. Include access to a board-certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; and

7. Be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section;

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section; or

c. A peer support specialist who:

(i) Is under the supervision of an approved behavioral health practitioner, as limited by subsection (1) of this section; and

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(ii) Provides support services for a mobile crisis service[face-to-face in a home or community setting].

(f)1. Day treatment shall be a non-residential, intensive treatment program for an individual under the age of twenty-one (21) years who has:

- a. A substance use disorder; and
- b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Be face-to-face, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170;

b. Consist of an organized, behavioral health program of treatment and rehabilitative services;

c.[b-] Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and developmental stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

d.[e-] Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during [~~on non-instructional weekdays during the school year including~~] scheduled school breaks;

(iii) In coordination with the recipient's individualized educational plan or Section 504 plan if the recipient has an individualized educational plan or Section 504 plan; and

(iv) [~~Under the supervision of a licensed or certified approved behavioral health services provider or a behavioral health practitioner working under clinical supervision; and~~

(v)] With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a chemical dependency treatment center shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders and co-occurring disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program or Section 504 plan.

5. Day treatment shall be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section;

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section; or

c. A peer support specialist who:

(i) Is under the supervision of an approved behavioral health practitioner, as limited by subsection (1) of this section; and

(ii) Provides support services for a day treatment service.

(g)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 [~~or 907 KAR 2:240~~] and who is experiencing or has experienced a substance use disorder to a recipient by sharing a similar substance use disorder in order to bring about a desired social or personal change;

(ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a substance use disorder to a parent or family member of a child sharing a similar substance use disorder in order to bring about a desired social or personal change; [~~or~~

(iii) An individual who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing a substance use disorder [~~A family member who has been trained~~

and certified in accordance with 908 KAR 2:230 of a child having or who has had a substance use disorder to a parent or family member of a child sharing a similar substance use disorder in order to bring about a desired social or personal change]; or

(iv) A registered alcohol and drug peer support specialist who has been trained and certified in accordance with KRS 309.0831 and is a self-identified consumer of substance use disorder services who provides emotional support to others with substance use disorder to achieve a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided face-to-face, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

f. Except for the engagement into substance use disorder treatment through an emergency department bridge clinic,[e-] be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

g.[f-] Be identified in each recipient's plan of care; and

h.[g-] Be designed to contribute directly to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a chemical dependency treatment center shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, [~~or~~] 908 KAR 2:240, or KRS 309.0831;

c. Use an approved behavioral health practitioner[services provider] to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members; [~~and~~

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients to provide no more than thirty (30) hours per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting to not exceed eight (8) individuals within any group at one (1) time.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care for a substance use disorder or for co-occurring disorders[inpatient hospitalization or partial hospitalization for a substance use disorder];

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current version[edition] of The ASAM Criteria for intensive outpatient level of care services;

d. Be provided face-to-face, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170;

e. Be provided at least three (3) hours per day at least three (3) days per week for adults;

f. Be provided at least six (6) hours per week for adolescents; and

g.[d-] Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

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(iii) Psycho-education related to identified goals in the recipient's treatment plan.

2. During psycho-education, the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a chemical dependency treatment center shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practice registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the recipient; and

b. Restoration of a recipient to **his or her[their]** best possible functional level from substance use disorder or co-occurring disorders[Recipient's recovery from a substance use disorder];

2. Consist of:

a. A face-to-face encounter or via telehealth as appropriate pursuant to 907 KAR 3:170 that is a one (1) on one (1) encounter between the provider and recipient, ~~one-on-one encounter between the provider and recipient~~; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; ~~and~~

4. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual[recipient]; and

(ii) Restoration of a recipient to **his or her[their]** best possible functional level from **[a]** substance use disorder or co-occurring disorders[Recipient's recovery from a substance use disorder];

c. Consist of a face-to-face, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170, behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting;

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals, including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within[of] the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(k)1. Family outpatient therapy shall consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and well-being of the individual[recipient]; or

(ii) Restoration of a recipient to **his or her[their]** best possible functional level from **[a]** substance use disorder or co-occurring disorders[disorder][Recipient's recovery from a substance use disorder]; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient[individual] unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(l)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face or appropriate telehealth, provided pursuant to 907 KAR 3:170, behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient[recipient's representative], school personnel[staff—person], treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; ~~and~~

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age; and

c. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record[Consent given to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed by the recipient or recipient's representative and filed in the recipient's health record].

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(m)1. Screening, brief intervention, and referral to treatment for a substance use disorder shall:

a. Be provided face-to-face or via telehealth as appropriate according to 907 KAR 3:170;

b.[4.] Be an evidence-based early-intervention approach for an individual with non-dependent substance use [in order] to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

c.[2.] Consist of:

(i)[a.] Using a standardized screening tool to assess an individual for risky substance use behavior;

(ii)[b.] Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice[to the recipient]; and

(iii)[c.] Referring a recipient to additional substance use disorder services if the recipient is determined to need additional services to address [the recipient's] substance use.

2. A screening and brief intervention that does not meet criteria for referral to treatment may be subject to coverage by the department.

3. A screening, brief intervention, and referral to treatment for a substance use disorder shall be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(n)1. Service planning shall:

a. Be provided face-to-face, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170;

b. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of [a] substance use disorder or co-occurring disorders;

c. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

d. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed and signed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

3. Service planning shall be provided by:

a. An approved behavioral health practitioner, as limited by subsection (1) of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsection (1) of this section.

(o)1. Ambulatory withdrawal management services shall:

a. Be provided face-to-face for recipients with [a] substance use disorder or co-occurring disorders;

b. Be incorporated into a recipient's care as appropriate according to the continuum of care described in the most current version of The ASAM Criteria; and

c. Be in accordance with the most current version of The ASAM Criteria for ambulatory withdrawal management levels in an outpatient setting.

2. A recipient who is receiving ambulatory withdrawal management services shall:

a. Meet the most current **version[edition]** of diagnostic criteria for substance withdrawal management found in the Diagnostic and Statistical Manual of Mental Disorders; and

b. Meet the current dimensional admissions criteria for withdrawal management level of care as found in **the most current version of The ASAM Criteria.**

3. Ambulatory withdrawal management services shall be

provided by:

a. A physician;

b. A psychiatrist;

c. A physician assistant;

d. An advanced practice registered nurse; or

e. Any other approved behavioral health practitioner with oversight by a physician, advanced practice registered nurse, or a physician assistant, as limited by subsection (1) of this section.

(p)1. Medication assisted treatment shall be provided by an authorized prescribing provider who:

a. Is:

(i) A physician licensed to practice medicine under KRS Chapter 311;

(ii) An advanced practice registered nurse (APRN); or

(iii) A physician assistant **licensed to practice medicine under KRS Chapter 311[who has appropriately updated department provider enrollment information];**

b. Meets standards in accordance with 201 KAR 9:270 or 201 KAR 20:065;

c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products, **including any waiving or expansion of buprenorphine prescribing authority by the federal government;** and

d. Has experience and knowledge in addiction medicine.

2. Medication assisted treatment with behavioral health therapies shall:

a. Be co-located within the same practicing site as the practitioner with a waiver pursuant to subparagraph 1.b. of this paragraph or be conducted via telehealth as appropriate according to 907 KAR 3:170; or

b. Be conducted with agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in biopsychosocial dimensions of alcohol or other substance use disorder, such as:

(i) An approved behavioral health practitioner, as limited by subsection (1) of this section; or

(ii) A multi-specialty group or behavioral health provider group pursuant to 907 KAR 15:010.

3. A medication assisted treatment program shall:

a. Assess the need for treatment including:

(i) A full patient history to determine the severity of the patient's substance use disorder; and

(ii) Identifying and addressing any underlying or co-occurring diseases or conditions, as necessary;

b. Educate the patient about how the medication works, including:

(i) The associated risks and benefits; and

(ii) Overdose prevention;

c. Evaluate the need for medically managed withdrawal from substances;

d. Refer patients for higher levels of care if necessary; and

e. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.

4. Medication assisted treatment shall be provided by:

a. A physician;

b. A psychiatrist;

c. An advanced practice registered nurse; or

d. An approved behavioral health practitioner, as limited pursuant to subsection (1) of this section, or approved behavioral health practitioner under supervision, as limited pursuant to subsection (1) of this section, to provide counseling, behavioral therapies, and other support components with experience and knowledge in addiction medicine.

(q)1. An inpatient chemical dependency treatment program shall:

a. Be a structured inpatient program to provide medical, social, diagnostic, and treatment services to individuals with substance use disorder or co-occurring disorders;

b.(i) If being provided as an ASAM 3.7 level of care medically monitored intensive inpatient service, be provided face-to-face, twenty-four (24) hours per day, seven (7) days per week, 365 days a year with continuous nursing services and under

the medical direction of a physician; or

(ii) If being provided as an ASAM 3.5 level of care clinically managed high intensity residential service, be provided face-to-face, or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170, twenty-four (24) hours per day, seven (7) days per week, and 365 days a year; and

c. Meet the service criteria for medically monitored intensive inpatient services using the most current version of The ASAM Criteria, currently described by ASAM as a 3.7 level of care; and

d. Include the following services:

- (i) Screening;
- (ii) Assessment;
- (iii) Service planning;
- (iv) Psychiatric services;
- (v) Individual therapy;
- (vi) Family therapy;
- (vii) Group therapy;
- (viii) Peer support;
- (ix) Medication assisted treatment; or
- (x) Clinically managed high intensity residential services, as established pursuant to subparagraph 2. of this paragraph; or

(xi) Medically monitored inpatient withdrawal management, as established pursuant to subparagraph 3.[2,] of this paragraph.

2. Clinically managed high intensity residential services provided in an inpatient chemical dependency treatment center shall:

a. Meet the service criteria for clinically managed high intensity residential services using the current version of The ASAM Criteria, currently described by ASAM as a 3.5 level of care;

b. Have:

(i) A planned and structured regimen of twenty-four (24) hour professionally directed evaluation, observation, clinical management, and addiction treatment;

(ii) Twenty-four (24) hour access to nursing care;

(iii) Twenty-four (24) hour access to a psychiatrist; and

(iv) Twenty-four (24) hour access to a physician; and

c. Comply with services pursuant to the requirements of 902 KAR 20:160, 908 KAR 1:370, and 908 KAR 1:372, as applicable to the current version of the ASAM 3.5 level of care.

3. Medically monitored inpatient withdrawal management services provided in an inpatient chemical dependency treatment center shall:

a. Meet the service criteria for medically monitored inpatient withdrawal management services using the current version[edition] of The ASAM Criteria, currently described by ASAM as a 3.7 level of care; and

b. Have:

(i) A planned and structured regimen of twenty-four (24) hour professionally directed evaluation, observation, medical monitoring, and addiction treatment;

(ii) Twenty-four (24) hour nursing care;

(iii) Twenty-four (24) hour access to a psychiatrist; and

(iv) Twenty-four (24) hour access to a physician; and

c.[b.] Comply with services pursuant to the requirements of 902 KAR 20:160.

4. An inpatient chemical dependency treatment program providing both ASAM 3.5 and ASAM 3.7 level of care services in the same facility shall:

a. Provide the ASAM 3.7 services within a separate unit from the ASAM 3.5 level of care unit; and

b. Meet the requirements of subparagraph 3. of this paragraph for all ASAM 3.7 level of care services[20:144].

5.[3.] For a recipient in an inpatient chemical dependency treatment program, care coordination shall include at minimum:

a. Facilitating medication assisted treatment for recipients as necessary, per recipient choice;

b. Referral to appropriate community services;

c. Facilitation of medical and behavioral health follow ups; and

d. Linking the recipient to the appropriate level of substance

use treatment within the continuum to provide ongoing supports.

6.[4.] Inpatient chemical dependency treatment services shall be provided in accordance with 902 KAR 20:160, Sections 4 and 7.

7.[5.] Length-of-stay for chemical dependency treatment services shall be person-centered and according to an individually designed plan of care that is consistent with this administrative regulation and the licensure of the facility and practitioner.

8.[6.]a. Except as established in clause b. or c. of this subparagraph, the physical structure in which inpatient chemical dependency treatment services is provided shall:

(i) Have between nine (9) and sixteen (16) beds; and

(ii) Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate, **except as allowed pursuant to subparagraphs 2., 3., and 4. of this paragraph and by 902 KAR 20:160, as applicable.**

b. If every recipient receiving services in the physical structure is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in clause a. of this subparagraph shall not apply.

c. The limit of sixteen (16) beds established in clause a. of this subparagraph shall not apply if the facility possesses the appropriate inpatient, **or residential, as applicable,** ASAM certification to provide chemical dependency treatment center services, with the exception that:

(i) Each currently enrolled chemical dependency treatment center shall be granted a one (1) time provisional certification that expires July 1, ~~2022~~[2024], unless extended by the department; or

(ii) A federal waiver, or other change to controlling federal law that allows for the availability of federal financial participation, shall be available for this clause to be operational.

9.[7.] Inpatient chemical dependency treatment services shall not include:

a. Room and board;

b. Educational services;

c. Vocational services;

d. Job training services;

e. Habilitation services;

f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;

g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;

h. Recreational activities;

i. Social activities; or

j. Services required to be covered elsewhere in the Medicaid state plan.

10.[8.] To provide inpatient chemical dependency treatment services, the program shall:

a. Have the capacity to employ staff authorized to provide services in accordance with this section and to coordinate the provision of services among team members;

b. Be licensed as a chemical dependency treatment services and facility in accordance with 902 KAR 20:160; and

c. After July 1, ~~2022~~[2024], possess an appropriate ASAM Level of Care Certification for medically monitored intensive inpatient services in accordance with **the most current version of The ASAM Criteria, and possess an appropriate ASAM Level of Care Certification for clinically managed high intensity residential services pursuant to the most current version of The ASAM Criteria if providing that level of care.**

11.[9.]a. Inpatient chemical dependency treatment shall be provided by:

(i) An approved behavioral health practitioner, except as provided pursuant to subsection (1) of this section; or

(ii) An approved behavioral health practitioner under supervision, except as provided pursuant to subsection (1) of this section.

b. Support services for inpatient chemical dependency shall be provided by a peer support specialist under the supervision of an approved behavioral health practitioner.

(4)[The extent and type of a screening shall depend upon the nature of the problem of the individual seeking or being referred for services.

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~~(5) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders™.~~

(6) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's health record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;
2. Crisis intervention;
3. A screening; or
4. An assessment.

(2) The department shall not reimburse for both a screening and a screening, brief intervention and referral to treatment (SBIRT)~~[an SBIRT]~~ provided to a recipient on the same date of service.

(3) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:
 - a. A nursing facility; or
 - b. An intermediate care facility for individuals with an intellectual disability;
2. An inmate of a federal, local, or state:
 - a. Jail;
 - b. Detention center; or
 - c. Prison; or
3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) A consultation or educational service provided to a recipient or to others;

(c) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face" established in 907 KAR 15:005, Section 1(21). Contact that is not reimbursable under this paragraph may be permissible if it is conducted in the course of a telehealth service permitted pursuant to 907 KAR 3:170 or this administrative regulation, as applicable~~{14}~~;

- (d) Travel time;
- (e) A field trip;
- (f) A recreational activity;
- (g) A social activity; or
- (h) A physical exercise activity group.

(4)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 3(3)(l)1₂ of this administrative regulation.

(b) A third-party contract shall not be covered under this administrative regulation.

(5) A billing supervisor arrangement between a billing supervisor and an approved~~[a]~~ behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the approved behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the approved behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the same service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the

department shall not reimburse for the same service provided to the same recipient during the same time period by a chemical dependency treatment center.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A chemical dependency treatment center shall maintain a current health record for each recipient.

(2) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance or Medicaid participation information;
- f. If applicable, the referral source's name and address;
- g. Primary care physician's name and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis;
- i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider's name; and

j. The name of the informant and any other information deemed necessary by the chemical dependency treatment center in order to comply with the requirements of:

(i) This administrative regulation;

(ii) The chemical dependency treatment center's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

- a. Screening;
- b. Assessment, if an assessment was performed; and
- c. Disposition, if a disposition was performed;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished upon request:

a. To the Cabinet for Health and Family Services; or

b. For an enrollee, to the managed care organization in which the recipient is enrolled or has been enrolled in the past;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A chemical dependency treatment center's service notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; ~~[and]~~

2. Indicate if the service was provided face-to-face or via telehealth for outpatient services; and

3. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Behavioral health practitioner's intervention;

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- c. Changes in the plan of care if changes are made; and
- d. Need for continued treatment if deemed necessary.

(b)1. Any edit to notes shall:

- a. Clearly display the changes; and
- b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by an approved[a] behavioral health practitioner [working] under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.

2. If services are provided by an approved[a] behavioral health practitioner [working] under supervision, there shall be a monthly supervisory note recorded by the supervising professional that[which] reflects consultations with the approved behavioral health practitioner working under supervision concerning the:

- a. Case; and
- b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

- (a) A provisional diagnosis;
- (b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

- 1. Be organized in chronological order;
- 2. Be dated;
- 3. Be titled to indicate the service rendered;
- 4. State a starting and ending time for the service; and
- 5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

- 1. Be recorded in the notes; and
- 2. Not be reimbursable.

(9)(a) A termination summary shall:

- 1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and
- 2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

- b. Final diagnosis of clinical impression; and
- c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who has been terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring chemical dependency treatment center shall, within ten (10) business days of awareness of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, a Level I psychiatric residential treatment facility, a Level II psychiatric residential treatment facility, or an acute care hospital for care or treatment, the transferring chemical dependency treatment center shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(12)(a) If a chemical dependency treatment center's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the chemical dependency treatment center shall:

- 1. Remain the property of the chemical dependency treatment center; and
- 2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A chemical dependency treatment center shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a chemical dependency treatment center shall maintain a health record regarding a recipient for at least six (6) years from the last date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

- 1. Six (6) years unless the recipient is a minor; or
- 2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A chemical dependency treatment center shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

- 1. Be treated as confidential;
- 2. Not be disclosed to an unauthorized individual; and
- 3. Be disclosed to an authorized representative of:

- a. The department;
- b. Federal government; or
- c. For an enrollee, the managed care organization in which the enrollee is enrolled.

(c)1. Upon request, a chemical dependency treatment center shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department or the managed care organization, if applicable.

2. Failure to provide information referenced in subparagraph 1, of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) A chemical dependency treatment center shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a chemical dependency treatment center receives any duplicate payment or overpayment from the department or a

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managed care organization, regardless of reason, the chemical dependency treatment center shall return the payment to the department or managed care organization in accordance with 907 KAR 1:671.

(b) Failure to return a payment to the department or managed care organization in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the chemical dependency treatment center accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and
3. Payment from the recipient for the same service shall not be accepted by the chemical dependency treatment center.

(b)1. A chemical dependency treatment center may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Chemical dependency treatment center makes the recipient aware in writing in advance of providing the service that the:
 - (i) Recipient is liable for the payment; and
 - (ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1. of this paragraph, the:

- a. Chemical dependency treatment center shall not bill the department for the service; and
- b. Department shall not:
 - (i) Be liable for any part of the payment associated with the service; and
 - (ii) Make any payment to the chemical dependency treatment center regarding the service.

(4)(a) A chemical dependency treatment center shall attest by the chemical dependency treatment center's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee;
5. United States General Accounting Office or its designee; or
6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. If a chemical dependency treatment center receives a request from the:

a. Department to provide a claim, related information, related documentation, or record for auditing purposes, the chemical dependency treatment center shall provide the requested information to the department within the timeframe requested by the department; or

b. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the chemical dependency treatment center shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

2.a. The timeframe requested by the department or managed care organization for a chemical dependency treatment center to provide requested information shall be:

- (i) A reasonable amount of time given the nature of the request and the circumstances surrounding the request; and
- (ii) A minimum of one (1) business day.

b. A chemical dependency treatment center may request a longer timeframe to provide information to the department or a managed care organization if the chemical dependency treatment center justifies the need for a longer timeframe.

(d)1. All services provided shall be subject to review for recipient or provider fraud or abuse, and compliance with this administrative regulation and state and federal law.

2. Willful abuse by a chemical dependency treatment center shall result in the suspension or termination of the chemical dependency treatment center from Medicaid Program participation in accordance with 907 KAR 1:671.

Section 8. Third Party Liability. A chemical dependency treatment center shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A chemical dependency treatment center that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the chemical dependency treatment center's employees, officers, agents, or contractors;
2. Identify each electronic signature for which an individual has access; and
3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the chemical dependency treatment center's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 10. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Health record; or
- (3) Documentation associated with any claim or health record.

Section 11. Federal Approval and Federal Financial Participation. (1) The department's reimbursement of services pursuant to this administrative regulation shall be contingent upon:

- (a) Receipt of federal financial participation for the coverage; and
- (b) Centers for Medicare and Medicaid Services' approval for the coverage.

(2) The reimbursement of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.907 KAR 15:080

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and
Intellectual Disabilities
Division of Behavioral Health
(As Amended at ARRS, March 8, 2021)

908 KAR 2:270. Community behavioral health training.

RELATES TO: KRS 210.053

STATUTORY AUTHORITY: KRS 210.053

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.053

requires the cabinet to promulgate administrative regulations to establish and administer the community behavioral health training program. This administrative regulation establishes the community behavioral health training program and the awarding of training grants.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "Community behavioral health training" means training to identify and assist individuals who may have or may be developing or experiencing a:

- (a) Mental health disorder;
- (b) Substance use disorder; or
- (c) Mental health or substance use crisis.

Section 2. Training. ~~[(1) The cabinet shall administer the community behavioral health training program to ensure trainers can provide education opportunities to the community on how to identify and assist an individual who is believed to be:~~

~~(a) Developing or has developed a mental health disorder or an alcohol or substance use disorder; or~~

~~(b) Experiencing a mental health or substance use crisis.~~

~~(2)] The cabinet shall provide community behavioral health training information at <http://dbhdid.ky.gov/kdbhdid/default.aspx> [~~<https://www.dbhdid.ky.gov>~~].~~

Section 3. Grants. (1) Subject to funding, the cabinet shall provide training grants for community behavioral health training provided by certified trainers.

(2) all information for grant application shall be provided at <http://dbhdid.ky.gov/kdbhdid/default.aspx>. ~~[Training grants shall:~~

~~(a) Cover the cost of training courses; or~~

~~(b) Provide hardship subsidies for training fees.~~

~~(3) Grants shall be prioritized based on:~~

~~(a) Underserved populations;~~

~~(b) Areas with health care provider shortages; and~~

~~(c) Rural areas.~~

~~(4) Grants shall be evaluated on the trainings ability to provide quality behavioral health training to areas in need and trainers serving populations in need.]~~

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
Board of Social Work
(Amended After Comments)

201 KAR 23:150. Complaint procedure, disciplinary action,
and reconsideration.

RELATES TO: KRS 335.030, 335.070(1)(a), (2), (3), (4), (5),
(6), (7), (8), 335.150, 335.155

STATUTORY AUTHORITY: KRS 335.070(3), 335.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS
335.070(1)(a) authorizes the board to regulate the practice of
social work and enforce the provisions of KRS 335.010 to 335.160
and 335.990. KRS 335.070(3) authorizes the board to promulgate
and enforce reasonable administrative regulations to carry out the
provisions of KRS 335.010 to 335.160 and 335.990. KRS
335.070(2) and KRS 335.150 requires the board to regulate the
conduct of individuals [licensees], to investigate alleged
violations, to promote the efficient and fair conduct of disciplinary
proceedings~~[,]~~ and take appropriate action. This administrative
regulation establishes the procedures to be followed in handling
formal and informal disciplinary proceedings before the board in
the imposition of sanctions and disciplinary action of a licensee or
applicant in violation of KRS 335.030 or KRS 335.150.

Section 1. Complaint. (1) A complaint may be initiated by:

- (a) An individual;
 - (b) An individual who is authorized to act on the behalf of an
employer of a licensee or applicant;
 - (c) A government agency; or
 - (d) The board.
- (2) A complaint shall be:

(a) Made by a complainant in writing to the board on a
Kentucky Board of Social Work Complaint Form along with an
Authorization for Release of Medical Records Form (if applicable)
and describe with sufficient detail the alleged violation(s) of
KRS Chapter 335 or 201 KAR Chapter 23; and

(b) Received in the board office by mail, hand delivery, fax,
email, or by an online complaint submitted through the board's
website.

(3) The board may conduct an investigation and initiate any
necessary complaint on its own initiative without receipt of a
written complaint if the board has reasonable cause to believe that
there may be a violation of KRS 335.010 to 335.160 or the
administrative regulations of the board.

(4) A certified copy of a court record for conviction of a
misdemeanor or felony shall be considered a complaint against a
licensee or temporary permit holder.

(5) Redaction.

(a) Upon recommendation of the complaint committee and
consent by majority vote of the board, the board may direct that a
complaint be redacted of personal names, identification numbers,
and contact information.

(b) The board shall keep the original complaint free of
redactions and store the document in the complaint case file.[]

~~(c) The board shall send a redacted copy of a complaint to
the respondent to meet the requirements of Section (3)(1) of
this administrative regulation. The original complaint that is
free of redactions may be viewed by the respondent upon
written request submitted to the board but shall not be
released to the respondent or the public until final disposition
of the matter.]~~

Section 2. Notice to Respondent. (1)~~(a)~~ The board shall notify
a respondent in writing of the receipt of a complaint and send a
copy of the complaint to the respondent at his or her mailing
address or electronic mail address provided to the board~~[-];~~

(b) The board shall send a redacted copy of a complaint to
the respondent. Respondents shall be entitled to inspect
records related to them or in which he or she is mentioned by

name pursuant to KRS 61.884.

~~(c)(a)~~ The board may keep the complainant's name and
contact information confidential until completion of the
investigation if any.

~~(2) [(b)]~~ A respondent shall file a written response to a
complaint with the board by mail, hand delivery, fax, or email
within twenty (20) days after receipt of notice of the complaint,
unless an extension is requested and granted in accordance
with subsection (3) of this section.

~~3. [(e)]~~ Failure of a respondent to file a timely response to the
complaint shall constitute a violation of a board order and this [or]
administrative regulation and shall be grounds for disciplinary
action under KRS 335.150(1)(f).

~~4. [(2)]~~ Request for extension of time.

(a) A respondent or his or her legal representative may request
an extension of time or additional time to file a response by
submitting a written request to the board on or before the
expiration of the twenty (20) day due date established in
subsection (2) of this section~~[(3)(b)].~~

(b) The complaint committee or the board administrator
may grant an extension of time as appropriate.

Section 3. Recommendations of Complaint Committee. (1)
Based on consideration and review of the complaint [and] the
response, and any other relevant information or material
available, the complaint committee may recommend that the
board:

(a) ~~Dismiss [Recommend that]~~ a complaint ~~[be dismissed]~~
and the matter closed where:

1. The board lacks jurisdiction over the person named in the
complaint;
2. There is insufficient evidence to support the complaint;
3. There are no violations of laws, rules or [and] regulations
governing the practice of social work; ~~[or]~~

4. The conduct complained of does not warrant disciplinary or
other remedial action; ~~[-]~~

5. Upon reaching a decision to dismiss a complaint, the board
shall notify the respondent and complainant of the disposition of
the matter in writing, by personal service, regular mail, or electronic
mail address provided to the board; or [-]

6. Dismissal of a complaint shall be a final board action and
shall not be subject to further investigation by the board or appeal
under KRS 335.155; ~~[-]~~

(b) ~~Further[Recommend further]~~ investigation of the
complaint. If the board approves an investigation, the board may
be assisted by board staff, an agent of the board, the Office of the
Attorney General, or other appropriate local, state, or federal
agency; ~~[-]~~

(c) Refer the complaint to another committee of the board; ~~[-]~~

(d) Request an Authorization for Release of Medical Records
Form from a party; ~~[-]~~

(e) Resolve the complaint through informal proceedings
pursuant to KRS 335.150(4); ~~[-]~~

1. At any time during the complaint process, the board may
authorize the board attorney or executive director of the board to
enter into discussions or negotiations with a respondent and his or
her attorney, if any, for the purpose of settling and informally
dispensing with the complaint.

2. An agreed order or assurance of voluntary compliance shall
be approved a majority vote of the board and signed by the
chairperson of the board, the respondent, and the respondent's
attorney, if any. Copies shall be placed in the licensee's file and
provided to the complainant.

3. The board may employ mediation as a method of resolving
the matter informally.

4. A mediated agreement shall be handled in the same manner
as an agreed order in subsection 1 of this section.

(f) Issue a formal complaint and provide notice of hearing to
the respondent in accordance with KRS Chapter 13B and KRS
335.155; ~~[-]~~

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(g) Refer the matter to another government agency; ~~or [-]~~
(h) Initiate a proceeding in its own name in Franklin Circuit Court to restrain and enjoin a violation in accordance with KRS 335.160.

(2) If at any time a [A] complaint committee member becomes aware of having a possible conflict of interest, the member shall disclose the existence of the conflict to the complaint committee and the member may be excused by the board.

Section 4. Board Action upon Recommendation of Complaint Committee. (1) The board shall review the committee's recommendations and shall approve or reject by majority vote the recommendations in whole or in part.

(2) A board member having a known conflict of interest shall disclose the existence of the conflict in writing to the board and may be excused, if warranted.

(3) The board shall notify a respondent and complainant of the resolution of the complaint in writing, by personal service, by the regular mail, or electronic mail address provided to the board.

Section 5. Motion to Reconsider. (1) A respondent may file a motion to reconsider, modify, or reverse the final disposition of a disciplinary hearing to the board.

(2) The motion to reconsider shall provide evidence of the following:

- (a) Grounds and reasons for reconsideration, modification, or reversal;
- (b) Rehabilitation or restitution, if applicable; and
- (c) Status of probation, parole, or supervision by any state or federal government agency or board.

(3) The complaint committee shall consider any such motion to reconsider at the next regularly scheduled committee meeting and any change in disposition shall be approved by a majority vote of the board.

(4) The board shall notify a respondent and complainant of the disposition of the reconsideration in writing, by personal service, by the regular mail, or electronic mail address provided to the board.

(5) The board shall consider no more than one (1) motion to reconsider from a respondent in a final matter.

Section 6. Unlicensed Practice. (1) If the complaint committee concludes that a complaint is substantiated to show that a person is practicing social work without a license, the committee shall prepare a letter signed by the board chair or an authorized representative and [to] notify the person of the committee's belief that the person is practicing without a license and request that the person voluntarily cease the practice without a license.[]

~~(2) Penalty. Any person who shall be found by the board, after hearing or by agreed order, to have unlawfully engaged in the practice of social work shall be subject to a fine to be imposed by the board not to exceed \$250 per day of unlicensed practice, and not to exceed the total sum of \$2,500.~~

~~(2) [(3)]~~ The board may forward the complaint to the appropriate county attorney or Commonwealth's attorney with a request that appropriate action be taken in accordance with KRS 335.990.

~~(3) [(4)]~~ The board may initiate an action for injunctive relief in Franklin Circuit Court to restrain and enjoin violations in accordance with KRS 335.160.

Section 7. Incapacity of Respondent. (1) If the board receives a complaint alleging that a licensee or an applicant has been legally declared mentally incompetent or may be mentally incapable of providing social work services in a competent, safe, ethical, or professional manner, the board shall follow the procedures established in this administrative regulation;

~~(2) [(b)]~~ The board may order the licensee or applicant to submit to an examination by a psychologist, physician, or certified alcohol and drug counselor designated by the board to determine whether the licensee or applicant is capable of providing social

work services in a competent, safe, ethical, or professional manner in accordance with KRS 335.010 to 335.16 and the administrative regulations as established by 201 KAR Chapter 23.

~~(3) [(e)]~~ The board shall pay the cost for an examination initiated and recommended by the board. The respondent shall pay the cost of the examination if he or she seeks an independent examination.

Section 8. Emergency Action. (1) Nothing in this administrative regulation shall be construed to prevent the board from taking emergency action if authorized by KRS 13B.125.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KY Board of Social Work Complaint Form," 12/2020; and
- (b) "Authorization for Release of Medical Records," 12/2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., subject to COVID-10 restrictions.

JAY MILLER, Board Chairperson

APPROVED BY AGENCY: March 15, 2021

FILED WITH LRC: March 15, 2021 at 9:59 a.m.

CONTACT PERSON: Margaret Hazlette, Interim Board Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, phone (502) 564-2350, email Margaret.hazlette@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Margaret Hazlette

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for receiving and processing complaints against individuals regarding the practice of social work. The regulation sets the complaint procedures, hearing and appeal procedures, and reconsideration procedure for board disciplinary actions.

(b) The necessity of this administrative regulation: The regulation is necessary to establish uniform procedures for receiving and processing complaints. The regulation is necessary to establish a hearing and appeal and reconsideration procedure for board disciplinary actions.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 335 requires the board to enforce the provisions of the chapter. KRS 335.070 and 335.150 require the board to investigate allegations brought to its attention and prosecute violations of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will inform licensees and the public of the complaint procedures and hearing process for complaints.

(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. The regulation will create a uniform procedure for hearing and processing complaints and reconsidering the disposition of complaints. The regulation will allow the board to recover costs associated with disciplinary actions.

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary to create uniform procedures for complaints and reconsiderations. The regulation is necessary to help the board recover the costs of processing complaints.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.070 and 335.150 require the board to enforce the provisions of KRS Chapter 335. KRS 335.070(1) allows the board to take disciplinary action against licensees that violation the terms of the statute and impose disciplinary fines and conditions.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will create uniform procedures for complaints and reconsiderations. This regulation will protect individuals that file complaints by creating a process to protect confidential information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 650 persons will seek licensure within the next fiscal year, this regulation will also continue as new applicants seek licensure from the board.

(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 administrative regulation requires licensees to comply with the complaint procedures. This administrative regulation will allow the board to recover costs and fees in disciplinary actions and protect confidential information submitted by individual complainants as needed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to licensees to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees and the public will benefit from uniform complaint procedures and a method to request that the board reconsider disciplinary actions. Individuals that file complaints will have confidential information protected by the board. The board can recover licensee fees used in the complaint process.

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

(a) Initially: The annual budget of this board for FY21 is \$425,300. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The estimated budget for the board is in excess of \$426,000. It will not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded solely by fees paid by the licensees and applicants.

(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 not require an increase in fees to implement the regulation.

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

(9) TIERING: Is tiering applied? No. Tiering is not necessary because the procedures for filing and reviewing complaints in this regulation will be applied to all individuals 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? Kentucky Board of Social Work is an administrative body created by KRS 335.030. The board does not anticipate that this regulation will impact state or local government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.050, KRS 335.070(1); KRS 335.150; KRS 335.160.

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. None.

(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? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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 (+/-): N/A
Other Explanation: N/A

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(Amended After Comments)

302 KAR 79:011. Motor fuel quality testing and inspection program.

RELATES TO: KRS 363.900 - 363.908, 42 U.S.C. 7545(o)(1)(D), 16 C.F.R. 306.12, 40 C.F.R. 80.27

STATUTORY AUTHORITY: KRS 363.902, 363.908, 16 C.F.R. 306, 16 C.F.R. 309, 40 C.F.R. 80.27

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes procedures to implement and administer a motor fuels inspection and testing program.

Section 1. Definitions.

(1) "Administrative Stop-Sale Order" means a motor fuel product is ordered removed from sale to the consumer due to a violation not related to motor fuel quality standards and specifications.

(2)[(1)] "Alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing eighty-five (85) percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal derived liquid fuels; fuels, other than alcohol, derived from biological materials.

(3) [(2)] "Anti-Knock Index" or "AKI" means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON): AKI = (RON+MON)/2; this value is called by a variety of names, in addition to anti-knock index, including: Octane rating, Posted octane, (R+M)/2 octane.[

(3) "ASTM International" means the international voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services and the promotion of related knowledge.

(4) "Automotive Fuel Rating" means the automotive fuel rating required under the amended Automotive Fuel Ratings, Certification and Posting Rule, 16 C.F.R. Part 306. The automotive fuel rating for alternative non-liquid automotive fuels is expressed in 16 C.F.R. Part 309.

(5) "Aviation gasoline" means a type of gasoline suitable for use as a fuel in an aviation spark-ignition internal combustion engine.

(6) "Aviation turbine fuel" means a refined middle distillate suitable for use as a fuel in an aviation gas turbine internal combustion engine.

(7) "Biodiesel" means a fuel comprised of, at least ninety-nine (99) percent by volume, mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B-100 or B-99.

(8) "Biodiesel blend" means hydrocarbon-based diesel fuel blended with between six (6) and twenty (20) percent by volume biodiesel and can [may] contain fuel additives.

(9) "Biomass-based diesel" means a diesel fuel substitute produced or co-produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under 42 U.S.C. 7545§ (o) (1) (D), and includes fuel derived from animal wastes, including poultry fats and poultry wastes, and other waste materials, or from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater. [

~~(10) "Compressed Natural Gas (CNG)" means natural gas which has been compressed and dispensed into fuel storage containers and is suitable for use as an engine fuel.~~

~~(11) "Department" means the Kentucky Department of Agriculture.~~

~~(12) "Diesel" means a refined hydrocarbon suitable for use as a fuel in a compression-ignition internal combustion engine that may contain fuel additives and up to five (5) percent by volume of biodiesel or biomass-based diesel.]~~

~~(10) [(13)] "Distributor" means any carrier or supplier that [who] transports or stores, or causes the transportation or storage, of motor fuel without taking title to or otherwise having ownership of the motor fuel and without altering either the quality or quantity.~~

~~(11) [(14)] "Ethanol flex fuel blends", commonly known as "Flex Fuel", means gasoline-ethanol mixtures of more than fifty-one (51) percent but not greater than eighty-three (83) percent ethanol by volume, restricted for use in vehicles equipped with flexible-fuel spark ignition engines.~~

~~(12) [(15)] "EPA" means the United States Environmental Protection Agency.[~~

~~(16) "Gasoline" means a volatile mixture of liquid hydrocarbons containing small amounts of additives for use as a fuel in a spark-ignition internal combustion engine and has not been blended with oxygenates, [;] including neat, conventional, and recreational gasoline.]~~

~~(13) [(17)] "Gasoline-oxygenate blend" means a fuel consisting primarily of gasoline blended with more than one (1) percent by volume oxygenate, with more than three tenths (0.3) of a percent by volume methanol; [or with not more than sixteen (16) percent isobutanol;] this includes gasoline-ethanol blends containing between one (1) and fifteen (15) percent ethanol by volume.~~

~~(14) [(18)] "Internal combustion engine" means a device used to generate power by converting chemical energy bound in a fuel via spark-ignition or compression-ignition engine combustion into mechanical work to power a vehicle or other device.~~

~~(15) [(19)] "License" means retail motor fuel license.~~

~~(16) [(20)] "License holder" means the person, owner, or retailer or their delegated representative, that is financially responsible for the cost of fees, fines, corrective actions, and remediation of motor fuel quality, to ensure compliance with the Motor Fuel Inspection and Testing Program pursuant to KRS 363.900-908.[~~

~~(21) "Liquefied natural gas" or "LNG" means natural gas that has been liquefied at negative two hundred sixty degrees Fahrenheit (-260 °F) and stored in insulated cryogenic tanks for use as a motor fuel.~~

~~(22) "Liquefied petroleum gas" or "LPG" means a mixture of normally gaseous hydrocarbons, predominantly propane that has been liquefied by compression or cooling, or both, to facilitate storage, transport, and handling for use as a motor fuel.]~~

~~(17) [(23)] "Manifolded" means a piping connection between two (2) or more tanks that allows fuel to freely flow from one tank to another thus drawing product from multiple tanks.~~

~~(18) [(24)] "Mid-level ethanol flex fuel blends" means gasoline-ethanol mixtures containing between sixteen (16) and fifty (50) percent ethanol by volume, restricted for use in flexible-fuel vehicles with automotive spark-ignition engines.~~

~~(19) "Motor Fuel Quality Stop-Sale Order" means a motor fuel product is ordered removed from sale to the consumer for failure to conform to minimum specifications for the particular type, class, and grade.~~

~~(20) [(25)] "Oxygenate" means an oxygen-containing organic compound, such as an alcohol, like ethanol, that can be used as a fuel or fuel supplement.~~

~~(21) [(26)] "Person" means an individual, partnership, corporation, company, firm, association, or other business entity.~~

~~(22) [(27)] "Premium diesel" means diesel fuel identified on retail dispensers with an additional term incorporated directly in a product or grade name that differentiates the fuel and implies the fuel provides properties that meet or exceed the minimum requirements of the NIST Handbook 130 Uniform Engine Fuels and Automotive Lubricants Regulation, §2.2.1 for Premium Diesel Fuel, [minimum specification limits or performance.]~~

~~(23) [(28)] "Product transfer documentation" means a bill of lading, invoice, loading, delivery, or meter ticket, bill of sale, or any combination of product delivery documentation meeting the requirements established [specified] in this administrative regulation, that shall accompany a shipment of motor fuel.~~

~~(24) [(29)] "Racing gasoline" means a specialty fuel typically used in non-road racing vehicles that is generally of lower volatility and[;] has a narrower boiling range and a higher octane rating than gasoline or gasoline-oxygenate blends made for use in conventional passenger vehicles.~~

~~(25) [(29)] "Reid Vapor Pressure" or "RVP" means a measure of the volatility of gasoline and gasoline-oxygenate blends.[;] It is the property of a liquid fuel that distinguishes [outlines] its evaporation characteristics.[~~

~~(30) "Retail Facility" (a) Means a licensed service station, garage, truck stop or other outlet selling from a motor fuel retail dispensing device that is compliant with 302 KAR 81:010, for the purpose of engaging in the business of selling or distributing motor fuel to the consumer; and~~

~~(b) A Retail Facility does not include an outlet using such dispensers exclusively for company and fleet use and price contract sales.~~

~~(31) "Stop-Sale Order", means when a motor fuel product(s) is removed from sale to the consumer.~~

~~(31) "Stop-Sale Order, Administrative" means, when a motor fuel product(s) is ordered removed from sale to the consumer due to a violation(s) not related to motor fuel quality standards and specifications.~~

~~(32) "Stop-Sale Order, Motor Fuel Quality" means, when a motor fuel product(s) is ordered removed from sale to the consumer for failure to conform to minimum specifications for the particular type, class and grade.]~~

~~(26) [(33)] "Storage tank" means a tank located either above or below ground used to hold motor fuel intended for retail sale.~~

~~(27) [(34)] "V/L" means vapor to liquid ratio.~~

Section 2. Licensing and Renewal.

(1) ~~A~~ **[No]** person shall not offer for sale retail motor fuel to consumers without first obtaining a license from the department.

(a) Operating a retail facility without a retail motor fuel license shall [may] result in the placement of an Administrative Stop-Sale Order pursuant to a Level 6 Civil Penalty on all motor fuel offered for sale.

(2) Each retail facility motor fuel license shall be effective from the date of issuance until January 31 of the following calendar year. [and shall be renewed annually.]

(3) After January 31, 2023, the department shall [will] provide the ability to apply for or renew retail motor fuel licenses online.

(a) Paper applications and payments shall [will] no longer be accepted after January 31, 2023.

(b) Paper applications and payments submitted after January 31, 2023 shall [will] not be processed.

(4) A valid retail motor fuel license shall be conspicuously displayed at the retail facility.

(5) ~~A~~ retail motor fuel license shall be [licenses are] non-transferable.

(6) A retail motor fuel license shall [will] not be issued without an application having been first submitted.

(a) An application shall [Applications] be complete upon submission to the department [when submitted.] An incomplete application shall not be processed.

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(b) Payment ~~shall [must]~~ be ~~by [in the form of a]~~ money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601; or debit or credit through the Department's online portal.

(c) An application [Applications] without payment ~~shall [will]~~ not be processed.

(d) Payments received without a completed application ~~shall [will]~~ not be processed.

(e) The license holder shall affirm or modify the availability of each motor fuel offered for sale with each license application or renewal, ~~including [this includes]~~ any motor fuel subject to a Declaration of Non-Sale, as ~~established [provided for]~~ in Section (9) subsection (10) of this administrative regulation. [302 KAR 79:011(9)(10)].

(f) The license holder shall confirm that all retail dispensing devices used for retail sales ~~shall comply [are compliant]~~ with 302 KAR 81:010.

(7) Unpaid fines assessed under the Motor Fuel Quality Testing and Inspection Program ~~shall be grounds for [may result in]~~ the denial of license issuance.

(8) A [No] license holder shall ~~not~~ offer for sale a new motor fuel, or a motor fuel not ~~established [identified]~~ in this administrative regulation or 302 KAR 79:012, without first notifying the department in writing.

(9) A license holder shall notify the department in writing within ten (10) consecutive days ~~of [when]~~ any of the following ~~events [occurs or is likely to occur]~~:

(a) ~~The [When the]~~ Retail Facility closes;

(b) ~~[When]~~ The License Holder information changes;

(c) ~~[When]~~ A license holder intends to permanently modify motor fuel products offered for sale ~~[,]~~ or storage tank allocation; ~~or~~

(d) ~~[When]~~ A retail facility has a storage tank that has been entered into temporary closure, in accordance with any law or regulation.

Section 3. Labeling.

(1) The label showing the minimum automotive fuel rating shall meet the same specifications required in 16 C.F.R. Part 306 or 16 C.F.R. Part 309.

(2)(a) Retail dispensing devices shall display the octane rating certified on the product transfer documentation to the license holder of gasoline and gasoline-oxygenate blends being offered for sale to consumers.

(b) At least one (1) label on the face of the dispenser shall identify the octane rating.

(c) If two (2) or more gasolines or gasoline-oxygenate blends with different octane ratings are sold from a single dispenser, then a separate label for each octane rating shall be placed on the face of the dispenser.

(3) Labels shall be placed conspicuously on the dispenser and be in full view of consumers. Labels shall be placed as near as reasonably practical to the price.

(4) During remediation the posted automotive fuel rating may differ from that certified on the product transfer documentation; otherwise, the posted automotive fuel rating ~~shall [must]~~ meet or exceed the certification [that which is certified] on the product transfer documentation.

(5) (a) In addition to this regulation, for gasoline containing less than one (1) percent by volume oxygenate a label shall be posted that contains words such as "neat," "conventional," "recreational," "alcohol free," "contains no ethanol," or other language approved by the department.

(b) The label shall not contain the following: "100 %" or "pure gasoline."

(6) Gasoline and gasoline-oxygenate blends ~~shall [must]~~ be labeled in accordance with 302 KAR 79:012, Section 1(5)(a) through (c). [(1)-(5) (a-c)].

(7) Gasoline-ethanol blends ~~containing [with ethanol content]~~ greater than ten (10) percent, up to and including fifteen (15) percent, shall be labeled in accordance with the EPA dispenser labeling requirements in 40 C.F.R. 1090.1510.

(8) No later than January 31, 2023, the selector identifying Ethanol Flex Fuels containing at least fifty-one (51) percent and no greater than eighty-three (83) percent ethanol by volume ["E-85" products] shall [must] be labeled as either:

(a) "Ethanol Flex Fuel";

(b) "E-85";

(c) The numerical value representing the percentage by volume ethanol in the fuel, rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol";

(d) The phrase, "Contains 51% - 83% Ethanol"; or

(e) Containing the requirements of 16 C.F.R. 306.12(4).

1. In addition to the requirements of (a-d) of this subsection, an additional label, meeting the requirements of 16 C.F.R. 306.12 (4), shall be in a prominent place, as close to the selector as practical.

2. The label shall be positioned to clearly identify which control the consumer will use to select the Ethanol Flex Fuel.

3. Illustrations of Ethanol Flex Fuel labels. Labels shall meet the specifications in this section, and should look like these examples, except the black print should be on the appropriately colored orange background and the knock-out print within the black band must be orange. [retail facilities in Kentucky not later than January 31, 2023.]

(9) Aviation gasoline shall be identified by the grade terms contained in the latest version of ASTM D6227, ^[4]Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component, ^[4]ASTM D7547, ^[4]Standard Specification for Hydrocarbon Unleaded Aviation Gasoline, ^[4] and ASTM D910, ^[4]Standard Specification for Leaded Aviation Gasolines for the particular type and grade.

(10) Aviation turbine fuels shall be identified as grades Jet A, Jet A-1, or Jet B.

(11) A racing gasoline ~~label [labels]~~ shall display an AKI that meets or exceeds the certification [that which is certified] on the product transfer documentation.

(12) Diesel fuel other than No. 2-D shall be identified on the dispenser by grade.

Section 4. Retail Product Storage Identification.

(1) To facilitate retail motor fuel product storage identification, each product storage tank or vessel shall consist of a lid or access point, rim or fixed component, and collar or permanent label.

(a) Each lid or access point and rim or fixed component for any motor fuel product storage tank or vessel at the retail level shall be permanently, plainly, and vividly marked to identify the product contained inside by means of a description and color as designated in the published ^[4]API Recommended Practice 1637; Equipment Color-Symbols System, Figures 1-3 and with a collar or permanent label.

(b) In addition to a collar or permanent label, the lid or access point, and rim or fixed component shall be identified by one of the following methods:

1. Paint the lid or access point and rim or fixed component, then place a collar or permanent label near or around the access point that states the name or description of the product such as "Regular E10"; or

2. Paint the lid or access point and rim or fixed component, then fit a collar permanent label inside the lid or access point.

(2) If a retail motor fuel product is not covered in the publication ^[4]API Recommended Practice 1637; Figures 1-3 Equipment Color Symbols System^[4], the product [it] shall be permanently, plainly, and vividly marked to identify the product contained inside.

(3) To identify motor fuel products stored at the retail facility, a license holder shall place, in a conspicuous location, a legible chart identifying any of the following, if [when] applicable:

(a) The location of each storage tank in use;

(b) The type and grade of motor fuel in each storage tank;

(c) Which, if any, storage tanks are manifolded;

(d) Any dispenser displaying a single product or grade on multiple buttons;

(e) The dispenser supplied by each storage tank; and

(f) Any ~~product [product(s)]~~ subject to a Declaration of Non-Sale.

Section 5. Product Transfer Documentation.

(1) The requirements of this section ~~shall [are to]~~ be in addition to, and not in substitution of, other requirements established in any federal statute or regulation.

(2) Products regulated by this administrative regulation shall be accompanied by transfer documentation that detail components of the motor fuel.

(3) A legible paper copy, or digital representation, of the product transfer documentation shall be made available to the department prior to the conclusion of the inspection or upon request.

(4) With the exception of section [302 KAR 79:011] (7) (2) (b) ~~of this administrative regulation~~, each license holder selling motor fuel shall retain product transfer documentation for each grade at the location where the motor fuel is transferred for at least the last five (5) deliveries.

(5) ~~The license holder shall make available [In addition to other product transfer documentation requirements set forth in this administrative regulation, when any person transfers motor fuel, except for transfers]~~ to the Department upon request ~~[consumer, the transferor shall provide to the transferee]~~ product transfer documentation that shall state the following information for each type and grade of motor fuel, the:

- (a) ~~[The]~~ Type of motor fuel being transferred;
- (b) ~~[The]~~ Automotive fuel rating of the motor fuel being transferred;
- (c) ~~[The]~~ Name and address of the transferor;
- (d) ~~[The]~~ Name and address of the transferee;
- (e) ~~[The]~~ Volume of motor fuel being transferred; and
- (f) ~~[The]~~ Date of the transfer.

(6) ~~[In addition to other]~~ Product transfer documentation shall include ~~[requirements set forth in this section the following information, or similar, shall also be included:]~~

- (a) For gasoline, the statement "The RVP does not exceed (fill in appropriate value) psi;"
- (b) For gasoline, containing no oxygenate, ~~the~~ following statement, "Contains no oxygenate;[-]"

(c) For gasoline blended with ethanol in concentration of at least one (1) percent by volume in the motor fuel: shall also include the following information:

1. For gasoline blended with less than nine (9) percent by volume ethanol, the following statement: "Contains up to X% ethanol. The RVP does not exceed (fill in appropriate value) psi." The term X refers to the maximum volume percent of ethanol present in the gasoline;[-]

2. For gasoline blended with between nine (9) and ten (10) percent, by volume ethanol, the following statement: "Contains between 9% and 10% ethanol"; and[-]

3. For gasoline blended with greater than ten (10) percent, by volume, and not more than fifteen (15) percent, by volume ethanol the following statement: "Contains between 10% and 15% ethanol"; and

(d) For gasoline blended with an oxygenate other than ethanol, a statement declaring the name and percentage by volume of any oxygenate or combination of oxygenates present.

(7) ~~[In addition to other]~~ Product transfer documentation pertaining to ~~[requirements set forth in this section, all]~~ mid-level ethanol flex fuel and ethanol flex fuel blends, shall ~~[must]~~ be represented by the numerical value representing the [volume] percentage by volume ~~[of]~~ ethanol in the fuel, followed by the percentage sign followed by the term "Ethanol. Use Only in Flex Fuel Vehicles/May Harm Other Engines".

(a) For Mid-Level Ethanol Flex fuel blends containing more than sixteen (16) percent and no greater than fifty (50) percent ethanol by volume, the numerical value representing the [volume] percentage by volume ~~[of]~~ ethanol in the fuel, shall ~~[must]~~ be rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol."[-;:]

(b) For ethanol flex fuel blends containing more than, at least, fifty-one (51) percent and no greater than eighty-three (83) percent ethanol by volume of ethanol, the numerical value representing the [volume] percentage by volume ~~[of]~~ ethanol in the fuel, shall

~~[must]~~ be rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol", or the phrase, "Contains 51% - 83% Ethanol".

(8) ~~Diesel fuel blended [In addition to other product transfer documentation requirements set forth in this section, For biomass-based diesel, biodiesel, biomass-based diesel blends]~~ with more than five (5) percent by volume biomass-based diesel or ~~[and]~~ biodiesel blends with more than five (5) percent biodiesel, a disclosure of the biomass ~~[Biomass]~~-based diesel or biodiesel component, expressed as the percentage by volume ~~[shall be included]~~ in the product transfer documentation. Diesel fuel shall ~~[must]~~ also include a statement declaring the grade as either "No.1-D" or "No. 2-D."[-;]

(9) ~~[In addition to other]~~ Product transfer documentation pertaining to ~~[requirements set forth in this section,]~~ premium diesel shall be so ~~[must be]~~ identified ~~[as such]~~.

(10) ~~[In addition to other product transfer documentation requirements set forth in this section,]~~ Biodiesel blend stock shall be identified by the letter "B" followed by the numerical value representing the [volume]-percentage by volume of biodiesel either "B-99" or "B-100", followed by the term "Biodiesel Blend Stock."

(11) 100% ~~[In addition to other product transfer documentation requirements set forth in this section one hundred (100) percent,]~~ Biomass-Based diesel shall be identified by the phrase, "Contains ~~[contains]~~ 100% Biomass-Based diesel."

(12) ~~[In addition to other product transfer documentation requirements set forth in this section,]~~ Alternative fuel, with one (1) principal component, shall be identified by indicating the commonly-used name of the fuel along with a disclosure of the amount, expressed as a minimum percentage by volume; such as "M-85, Minimum 85% Methanol."[-;]

(13) ~~[In addition to other product transfer documentation requirements set forth in this section,]~~ Alternative fuel, with two (2) principle components, shall be identified by indicating the commonly-used name of the fuel along with a disclosure of the two (2) principle components, expressed as a minimum percentage by volume; such as "LPG, Minimum 90% Propane, 2% Butane."[-;]

Section 6. Unattended Stations. The license holder of a retail motor fuel dispensing site that is unstaffed shall comply with all motor fuel quality requirements established ~~[set forth]~~ in this administrative regulation.

Section 7. Inspection of Premises.

(1) The department's inspector shall present agency ~~[proper]~~ identification to the license holder prior to obtaining samples.

(2) (a) The department shall have access to all distributor and retail facility records relating to the distribution or sale of retail motor fuel.

(b) If a license holder sells retail motor fuel at more than one (1) location, the product transfer documentation may be retained at a central location if ~~[provided that]~~ the product transfer documentation is made available to the inspector prior to the conclusion of the inspection ~~[or upon request]~~.

(3) At each retail facility, having more than one (1) dispenser per product, the license holder shall ~~[must]~~ identify and affix all dispensers with an alphabetical or numerical designation.

(4) Each retail location shall have on file a chart or other means of determining each products volume in gallons. This information shall be supplied prior to conclusion of the inspection or upon request.

(5) The department shall have access to all motor fuel intended for retail sale for the purpose of examination, inspection, taking of samples, and investigations. A license holder shall not hinder or obstruct the department in the reasonable performance of its duties.

(a) If access is denied by the license holder, an Administrative Stop-Sale Order may be issued on the product identified by the department to be inspected until access is granted, even if the product ~~[product(s)]~~ has been removed from sale.

(b) A license holder shall ~~[may]~~ be exempt from ~~[the requirement of]~~ this section by providing proof that no motor fuel

is in the tank at the time of the inspection.

(6) A receipt, either printed by a device or written in clear hand script shall be provided to the department's inspector. Failure to meet the requirements of paragraphs (a) through (g) of this subsection shall result in the issuance of a Level 1 Civil Penalty. Receipts shall include:

- (a) ~~The~~ Retail facility address;
- (b) ~~The~~ Date of the transaction; [
- ~~(c) The time of the transaction;~~
- ~~(c) [(d) The] Price per gallon of the motor fuel dispensed;~~
- ~~(d) [(e) The] Total volume of motor fuel dispensed;~~
- ~~(e) [(f) The] Identity of the product [;] by name, symbol, or abbreviation; and~~
- ~~(f) [(g) The] Dispenser designation by either an alphabetical or numerical description.~~

(7) If the design, construction, or location of any storage tank is such as to require special equipment, accessories, or access for use or motor fuel return, the equipment, accessories, or access shall be supplied by the license holder.

Section 8. Sampling of Motor Fuel.

(1) Samples of motor fuel collected for testing shall be pumped, pulled, drawn, or otherwise procured in accordance with the most recent standard practice for the particular type, class, and grade of the motor fuel, using a standard or method detailed in one (1) of the following:

- (a) ASTM D4057-19, [“] Standard Practice for Manual Sampling of Petroleum and Petroleum Products; [“]
- (b) ASTM D5842-19, [“] Standard Practice for Sampling and Handling of Fuels for Volatility Measurement; [“] or
- (c) ASTM D4306-20, [“] Standard Practice for Aviation Fuel Sample Containers for Test Affected by Trace Contamination. [“]

(2) Only gasoline, gasoline-oxygenate blends, and diesel fuel shall [will] be subject to random sampling.

(3) Samples of not more than one (1) gallon per grade, per source, per inspection shall [may] be collected from any distributor or retail facility without cost to the state. If [When] the same type and grade of motor fuel from multiple storage tanks, which are not manifolded, is offered for sale at a retail facility a sample of each type and grade shall [may] be obtained.

(4) If [Where] a motor fuel quality Notice of Violation has been issued because of a [; for] complaint or [;] random or [and] department-initiated inspection, the department shall [will] pay the cost of the laboratory analysis associated with an initial inspection and the first and second follow-up inspections, if required.

(a) The license holder shall be responsible for payment of a percentage of the cost of each subsequent laboratory analysis needed to verify compliance with KRS 363.900 - 363.908 and this administrative regulation. This includes a specification test that was not applicable at the time of the initial inspection but is applicable at the time of the subsequent inspection.

1. The license holder shall [will] be required to pay [a fee equal to] fifty (50[%) percent of the cost of the laboratory analysis for the third follow-up inspection.

2. The license holder shall [will] be required to pay [a fee equal to] one-hundred (100) percent of the cost of the laboratory analysis for the fourth and any subsequent follow-up inspections.

3. Laboratory analysis costs shall [fees must] be paid by the license holder to the department prior to the follow-up inspection.

4. [a.] Payment of costs shall [fees must] be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601; or Debit or Credit through the Department's online portal.

(b) If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department shall [will] pay the cost of the additional testing.

Section 9. Enforcement.

(1) Any license holder found by the department to be in violation of KRS 363.900 - 363.908, this administrative regulation, or 302 KAR 79:012, shall receive a Notice of Violation by personal

service or certified mail detailing the facts constituting the citation of the violation and the assessment of a fine, if applicable.

(a) Each Notice of Violation shall state the amount of the fine. Fine amounts shall [will] be determined in accordance with [“]Motor Fuel Quality Testing and Inspection Program Civil Penalty Guidelines, [“] Form KDA-OCEP-MF-01. [”]

1. If a finding of the department results in the issuance of a Level 2, 3, 4, or 5 Civil Penalty, the assessed fine or order shall be afforded a case review upon written request.

2. If a finding of the department results in the issuance of any Level 1 Civil Penalty, it shall be prima facie evidence of the fact or facts found therein, and [;] the fine amount shall constitute a Final Agency Action and shall not be [is therefore not] subject to a case review.

(b) A follow-up inspection shall be conducted for every motor fuel quality violation resulting in a Level 2 Penalty and above.

(2) Operating without a retail motor fuel license shall be [is] a violation of KRS 363.904(1), which shall result in the placement of an Administrative Stop-Sale Order pursuant to a Level 6 Civil Penalty on all motor fuel offered for sale. The issuance of a citation for a violation of the statute shall be prima facie evidence of the fact or facts found therein. The Administrative Stop-Sale Order on all motor fuel offered for sale at the retail facility shall constitute a Final Agency Action and shall not be [is therefore not] subject to a case review.

(a) A Level 6 Civil Penalty may be remediated by filing an application to obtain or renew a license.

(3) Remediation options may include [may be achieved, by] removing and replacing or upgrading the motor fuel in storage to conform to minimum specifications for the particular type, class, and grade; or otherwise addressing the cause of the violation.

(4) If [When] a Notice of Violation or a Follow-up Failure has been issued, the license holder, within ten (10) consecutive day's receipt of the Notice:

(a) 1. Shall provide remediation documentation to the department describing the corrective action taken to resolve the violation [violation(s)] or

2. [4.] If the license holder has not provided the department with documentation in writing by the expiration of the ten (10) consecutive days, the product [product(s)] that was [were] the subject of the violation [violation(s)] shall be subject to [may be placed under] an Administrative Stop-Sale Order and subject to a Level 5 Civil Penalty by the department; or [;]

(b) May request a case review, as provided in Section [302-KAR 79:014](9)(1)(a)(1) of this administrative regulation. [section]

(5) The department shall obtain a follow-up sample from the retail facility for analysis within a period not to exceed three (3) business days, from receipt of remediation documentation as required in section [302-KAR 79:014](9)(4)(a) of this administrative regulation.

(a) If [When] the remediation action taken results in the downgrading of the posted automotive fuel rating, which is evidenced by photo documentation that complies with section [302-KAR 79:014](3) (1) of this administrative regulation, a follow-up sample shall [is] not be required.

(6) An Administrative Stop-Sale Order or a Motor Fuel Quality Stop-Sale Order may be included with a Notice of Violation or Follow-up Failure Notification.

(a) If a Motor Fuel Quality Stop-Sale Order is issued, the product identified in the Notice of Violation shall be removed from sale to the consumer.

(b) A product [Product(s)] shall remain under a Motor Fuel Quality Stop-Sale Order until subsequent sampling and analysis by the department verifies its compliance.

(c) The department shall [will] notify the license holder of its decision to remove Motor Fuel Quality Stop-Sale Order within a period not to exceed three (3) business days upon receipt of analysis indicating conformance with the minimum specification for the particular type, class, and grade of the motor fuel.

(7) Motor fuel not in compliance with this regulation may be subject to [The department may issue] a Motor Fuel Quality Stop-Sale Order. [For any motor fuel not in compliance with this administrative regulation.] The license holder shall be

notified of the Motor Fuel Quality Stop-Sale Order.

(a) The Motor Fuel Quality Stop-Sale Order shall be in writing and contain an explanation of the **violation [violation(s)]**.

(b) **If [When]** the department has made a determination that a violation has been resolved, the Motor Fuel Quality Stop-Sale Order shall be removed.

(c) A Motor Fuel Quality Stop-Sale Order shall apply to the product for which sample analysis indicates a violation.

(d) The Motor Fuel Quality Stop-Sale Order shall extend to motor fuels blended from any product placed under a Motor Fuel Quality Stop-Sale Order.

(8) Irrespective of ownership, any **Motor Fuel Quality Stop-Sale Order** shall remain in effect until remediation documentation, detailing the corrective action taken, has been received, in writing, from the license holder. **A product [Such product(s)]** shall continue to remain under a **Motor Fuel Quality Stop-Sale Order** until subsequent sampling and analysis by the department **verifies [verify]**—compliance with KRS 363.900 - 363.908 and this administrative regulation. If needed, the department may obtain a follow-up sample from the retail facility for analysis. This **requirement shall remain in effect [rule will survive]** if there is a change in licensure or ownership.

(9) The fine shall be paid within thirty (30) consecutive day's receipt of the Notice of Violation unless a case review is requested pursuant to **Section [302 KAR 79:014] (9)(1)(a)(1) of this administrative regulation**. Failure to pay a fine within thirty (30) consecutive day's receipt of the violation **shall be subject to [may result in]**—an Administrative Stop-Sale Order being issued by the department.

(10) Declaration of Non-Sale. If the license holder is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may remove a non-compliant motor fuel from sale to the consumer by obtaining a Declaration of Non-Sale. A Declaration of Non-Sale shall have the effect of a Motor Fuel Quality Stop-Sale Order on any retail motor fuel product to which it applies.

(a) A retail facility shall have a maximum of two (2) motor fuels subject to a declaration of non-sale at a time.

(b) If the fine associated with a motor fuel quality **violation [violation(s)]** has been paid [,] and the license holder is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may provide a **notarized [“]Declaration of Non-Sale[“]** to the department, on Form KDA-OCEP-MF-04, stating that the retail facility **shall [will]** no longer offer for sale a specific type and grade of motor fuel.

1. A separate Declaration of Non-Sale shall be submitted for each type and grade of motor fuel.

2. Each Declaration of Non-Sale **shall [must]** be complete **upon submission[when submitted]**.

3. An incomplete Declaration of Non-Sale **shall[will]** not be accepted or certified.

4. The certified Declaration of Non-Sale shall be conspicuously displayed at the retail facility.

(c) If the fine associated with a motor fuel quality **violation [violation(s)]** has not been paid[,], and the license holder made a timely request for a case review and is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may be granted a^["] Temporary Declaration of Non-Sale,^["] contingent upon payment of the fine **that [which]** is the subject of the case review.

1. A Temporary Declaration of Non-Sale is subject to the requirements **established[specified]** in **section [302 KAR 79:014](9) (10) (b) (1-4) of this administrative regulation**.

2. The case review shall be conducted in accordance with **section [302 KAR 79:014] (10) of this administrative regulation**.

3. After the license holder pays the fine stated in a **Notice of Final Agency Action**, the license holder may provide a **notarized [“] Declaration of Non-Sale[“]** to the department, on Form KDA-OCEP-MF-04, stating that the retail facility **shall [will]** no longer offer for sale a specific type and grade of motor fuel.

4. If the license holder fails to pay a fine stated in a Notice of Final Agency Action within fifteen (15) consecutive days after the receipt of the Notice, the Temporary Declaration of Non-Sale **shall**

[will] be revoked and the **product shall [product(s) subject to]** be placed under an Administrative Stop-Sale Order.

(d) Remediation. A Declaration of Non-Sale may be remediated by removing and replacing the affected motor fuel in storage and providing detailed documentation to the department of the corrective action taken.

1. The license holder under which the Declaration of Non-Sale was certified **shall [will be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 - 363.908 and this administrative regulation]**.

a. ~~The license holder will be required to pay a fee equal to fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.~~

b. ~~The license holder will be required to pay a fee equal to 100% one-hundred (100) percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.~~

c. ~~Remediation documentation and Laboratory analysis fees must be received by the department prior to the follow-up inspection.~~

d. ~~Payment of fees must be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601.~~

e. ~~If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department will pay the cost of the additional testing.~~

2. ~~If there has been a change in ownership and the license holder elects to achieve motor fuel quality compliance, the license holder will] be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 - 363.908 and this administrative regulation.~~

a. ~~The license holder shall pay fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.~~

b. ~~The license holder shall pay 100 percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.~~

c. ~~Remediation documentation and Laboratory analysis costs shall be received by the department prior to the follow-up inspection.~~

d. ~~Payment of costs shall be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601; or Debit or Credit through the Department's online portal.~~

e. ~~If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department shall pay the cost of the additional testing.~~

2. ~~If there has been a change in ownership and the license holder elects to achieve motor fuel quality compliance, the license holder shall be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 - 363.908 and this administrative regulation.~~

a. The department **shall[will]** pay the cost of the laboratory analysis associated with an initial inspection of remediation.

b. The license holder **shall[will be required to]** pay **[a fee equal to]** fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.

c. The license holder **shall[will be required to]** pay a **[fee equal to]** one-hundred (100) percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.

d. Corrective action documentation **shall [must]** be received by the department prior to inspection of remediation. Except for the initial inspection of remediation, laboratory analysis fees **shall [must]** be received by the department prior to the follow-up inspection.

e. [i] Payment of ~~costs shall [fees must]~~ be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601; or Debit or Credit through the Department's online portal.

f. [e] If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department ~~shall [will]~~ pay the cost of the additional testing.

(11) If a license holder fails to pay a fine stated in a Notice of Final Agency Action, within fifteen (15) consecutive day's receipt of the Notice [notice], the product [product(s)] that ~~was [were]~~ the subject of the violation shall [violation(s) may] be placed under an Administrative Stop-Sale Order and subject to a Level 5 Civil Penalty.

(12) Offering for sale a motor fuel product ~~that [which]~~ has been placed under a Motor Fuel Quality Stop-Sale Order or ~~that [which]~~ is subject to a Declaration of Non-Sale, shall be subject to a Level 5 Civil Penalty and fine.

(13) If a license holder offers motor fuel for sale in violation of an Administrative Stop-Sale Order pursuant to a Level 5 Civil Penalty, a fine ~~shall [will]~~ be assessed for each type, class, and grade of fuel offered for sale.

(14) Each violation of this administrative [the] regulation shall be deemed a separate occurrence for the purpose of the Civil Penalty and Fine Assessment.

Section 10. Case Review and Appeal.

(1) A Level 1 Civil Penalty ~~shall not be [is not]~~ subject to a case review. A Level 1 Civil Penalty may be appealed to the Office of the Attorney General, in accordance with Section [302 KAR 79:044] (11) of this administrative regulation.

(2) A Level 6 Civil Penalty ~~shall [is]~~ not ~~be~~ subject to a case review. A Level 6 Civil Penalty may be appealed to the Office of the Attorney General, in accordance with Section [302 KAR 79:044] (11) of this administrative regulation.

(3) A request for a case review shall be made in writing, within ten (10) consecutive days receipt of the department's Notice of Violation.

(4) A license holder may respond to a Notice of Violation, within ten (10) consecutive days of receipt of the department's Notice [notice], by requesting a case review or paying the assessed civil penalty. If no request for a case review is made within the ten (10) day period, then the Notice of Violation shall be deemed to be a ~~Final Order [is]~~ for the purposes of KRS Chapter 13B.

(5) Upon receipt of a request, the department ~~shall [will]~~ notify the license holder of a case review date. If the license holder is experiencing financial hardship and requests a reduction in a fine amount, prior to the date of the case review, the license holder shall submit three (3) most recent bank statements or other relevant documentation. The license holder may also submit, prior to the case review date, documentation detailing corrective action and cost incurred.

(6) Case reviews shall be heard by an administrative panel consisting of five (5) members ~~who [which]~~ shall be designated by the department.

(a) Five (5) members present shall constitute a quorum.

(b) The panel shall include at least one (1) person who is not affiliated with the motor fuel program.

(7) The members of the administrative panel shall not be required to accept or consider information or documents that were not received at least three (3) business days prior to the case review date.

(8) A license holder may appear before the administrative panel either in person or via telephonic conference. A case review ~~shall [must]~~ be requested and scheduled in advance.

(9) Using the notarized Notice for [is] Designation of Proxy for Case Review, ~~[is]~~ Form KDA-OCEP-MF-03, ~~[is]~~ a license holder may designate a proxy to appear as its representative before the administrative panel. Although it is not required, a license holder may designate legal counsel. ~~[to represent them]~~ The form for proxy representation ~~shall [must]~~ be notarized and submitted at

least three (3) business days prior to a case review. Nothing in this subsection ~~shall [should]~~ be construed as authorizing the unlicensed practice of law.

(10) A license holder may request to reschedule a case review for good cause.

(a) The request to reschedule ~~shall [must]~~ be submitted to the department in writing.

(b) The request to reschedule ~~shall [must]~~ be received at least seven (7) consecutive days prior to the case review date.

(11) The administrative panel may consider the degree and extent of harm caused by the violation [violation(s)] the cost of rectifying the noncompliance, the amount of financial benefit derived from the violation [violation(s)], whether the violation [violation(s)] was committed willfully, and the compliance record of the license holder ~~for [when]~~ determining the fine's recalculation. ~~[is]~~ (a) The administrative panel shall document its review using the ~~[is]~~ Motor Fuel Administrative Case Review Guidelines, ~~[is]~~ Form KDA-OCEP-MF-02 ~~[is]~~.

(12) Failure of a license holder to attend a scheduled case review ~~shall [will]~~ result in a determination by default and the department shall issue a Notice of Final Agency Action stating that the violation [violation(s)] and fine assessed remain as originally issued.

(13) If a license holder fails to pay a fine stated in a Notice of Final Agency Action, within fifteen (15) consecutive days after the receipt of the Notice [Final Agency Action], the product [product(s)] that ~~was [were]~~ the subject of the violation [violation(s)] shall [may] be placed under an Administrative Stop-Sale Order by the department.

(14) Within ten (10) consecutive day's receipt of Notice of Final Agency Action a Formal Administrative Hearing may be requested to appeal the decision ~~of [in]~~ a Final Agency Action.

Section 11 [40]. Formal Administrative Hearing.

(1) A Final Agency Action shall be subject to a Formal Administrative Hearing to be conducted in accordance with KRS Chapter 13B.

(2) Upon receipt of a Notice of Final Agency Action, an aggrieved party may, within ten (10) days, request in writing to the department, a hearing to contest the validity of the department's action.

(3) A request for a Formal Administrative Hearing shall be in writing.

(4) A request for a Formal Administrative Hearing shall state the reason [reason(s)] the aggrieved party believes the departments' action was erroneous.

(5) A request for a Formal Administrative Hearing shall be submitted to the Department of Agriculture, Office of Legal Services, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, within ten (10) days after the Notice of Final Agency Action is received.

Section 12. Civil Penalties.

Failure to comply with this administrative regulation may result in ~~a [the]~~ combination of ~~[any of the following]:~~

- (1) ~~[The]~~ Issuance of a Notice of Violation [violation(s)];
- (2) ~~[The]~~ Assessment of a fine;
- (3) ~~[The]~~ Issuance of an Administrative Stop-Sale Order;
- (4) ~~[The]~~ Issuance of a Motor Fuel Quality Stop-Sale Order; or
- (5) ~~[The]~~ Placement of an Administrative Stop-Sale Order on all motor fuel offered for sale at the retail facility.

Section 13. Consumer Motor Fuel Quality Complaints.

(1) Any person wishing to make a complaint about a deficiency in the quality of a motor fuel that was purchased within the Commonwealth shall file, not later than fourteen (14) consecutive days after the date of the complainant purchase of that motor fuel from the retail facility, a written complaint to the department including [identifying the following information]:

- (a) The name and contact information for the complainant;
- (b) The name and street address of the retail facility where the motor fuel was purchased and the dispenser number, if known;
- (c) The type of motor fuel that was purchased;

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- (d) The grade of the motor fuel that was purchased; and
- (e) A description of the deficiency.
- (2) The department shall not be required to investigate complaints meeting one (1) or more of the following:
 - (a) The complaint was submitted to the department more than fourteen (14) consecutive days after the date of the complainant purchase from the retail facility;
 - (b) The complainant is unable to specifically identify the retail facility ~~that~~**[which]** is the source of the motor fuel that is the subject of the complaint;
 - (c) The department has reason to believe that repeated complaints regarding the same retail facility are intended to unduly penalize the retail facility or to disrupt the essential functions of the department;~~[-]~~
 - (d) The complainant is not the owner of the vehicle or equipment damaged, the person who purchased the motor fuel, or a member of that person's immediate family;
 - (e) The complaint is determined by the department to relate to a topic other than the quality of a motor fuel; or
 - (f) The motor fuel referenced in the complaint is no longer present ~~[in the storage tank(s)]~~when the department arrives to conduct an investigation.

Section 14. Incorporated by Reference

- (1) The following material is incorporated by reference:
 - ~~(a) "16 C.F.R. 306 – Automotive Fuel Ratings, Certification and Posting", (2012);~~
 - ~~(b) "16 C.F.R. 309 – Labeling Requirements for Alternative Fuels", (2003);~~
 - ~~(c) "40 C.F.R. 80.41– Reformulated Gasoline Standards and Requirements for Compliance", (2007);~~
 - ~~(d) "40 C.F.R. 80.1501– Labeling Requirements that Apply to Retailers and Wholesale Purchaser-Consumers of Gasoline-Ethanol Blends that Contain Greater than 10 Volume Percent Ethanol and Not More than 15 Volume Percent Ethanol", (2014);~~
 - ~~(a) [(e)] "API Recommended Practice" 1637; 4th Edition, (April 2020), Using the API Color-Symbol System to Identify Equipment, Vehicles, and Transfer Points for Petroleum Fuels and Related Products at Refueling Facilities and Distribution Terminals;[-]~~
 - ~~(b) [(f)] "ASTM Standard D4057-19, Standard Practice for Manual Sampling of Petroleum and Petroleum Products", (2019);~~
 - ~~(c) [(g)] "ASTM Standard D4306-20, Standard Practice for Aviation Fuel Sample Containers for Test Affected by Trace Contamination", (2020);~~
 - ~~(d) [(h)] "ASTM Standard D5842-19, Standard Practice for Sampling and Handling of Fuels for Volatility Measurement", (2019);~~
 - ~~(e) [(i)] "Form KDA-OCEP-MF-01, Motor Fuel Inspection and Testing Civil Penalty Guidelines", (April 2021 [November 2020] Edition);~~
 - ~~(f) [(j)] "Form KDA-OCEP-MF-02, Motor Fuel Administrative Case Review Guidelines", (April 2021 [November 2020] Edition);~~
 - ~~(g) [(k)] "Form KDA-OCEP-MF-03, Notice of Designation of Proxy for Case Review", (April 2021 [November 2020] Edition);[and]~~
 - ~~(h) [(l)] "Form KDA-OCEP-MF-04, Declaration of Non-Sale", (April 2021 [November 2020] Edition); and~~
 - ~~(i) "Form KDA-OCEP-MF-05, Application for Motor Fuel License", April 2021.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner
APPROVED BY AGENCY: March 12, 2021
FILED WITH LRC: March 15, 2021 at 11:39 a.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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

- (1) Provide a brief summary of:
 - (a)What this administrative regulation does: The proposed rule will permit a wider range of "alternative" fuels and require those fuels to meet specified standards. Additionally, the proposed rule will require that a person who sells and distributes automotive fuels, including "alternative" fuels, to make certain disclosures, and that retailers of automotive fuels, including "alternative" fuels, must post certain information, in connection with the sale thereof.
 - (b) The necessity of this administrative regulation: This administrative regulation adopts rules that set forth standards relating to motor fuel quality, specifications, and sampling and testing methods.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363.902 directs the Commissioner of Agriculture, or his authorized agent, to implement and administer an inspection and testing program for motor fuels to ensure compliance with KRS 363.900 to 363.908. KRS 363.902 instructs that the standards set forth in the annual book of ASTM standards, supplements, and revisions shall be applied; and further that the department shall conform to any provisions of federal law or regulations which impose requirements in conflict with the ASTM standard.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the implementation of the statutes by modernizing language and creating clear guidance for motor fuel regulation in Kentucky.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This amendment changes various sections to conform with drafting requirements and public comments.
 - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform with drafting requirements and for proper responses to public comments.
 - (c) How the amendment conforms to the content of the authorizing statutes: KRS 363.902 directs the Commissioner of Agriculture, or his authorized agent, to implement and administer an inspection and testing program for motor fuels to ensure compliance with KRS 363.900 to 363.908. KRS 363.902 instructs that the standards set forth in the annual book of ASTM standards, supplements, and revisions shall be applied; and further that the department shall conform to any provisions of federal law or regulations which impose requirements in conflict with the ASTM standard. This amendment does those things.
 - (d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the implementation of the statutes by modernizing language and creating clear guidance for motor fuel regulation in Kentucky.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department of Agriculture, 2,800 retailers and possibly another 100 entities that are involved in the fueling industry.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Refiners, producers and distributors of motor fuels will benefit by adoption of the proposed amendment in that they will be allowed to offer new fuels, some or all of which may prove popular with consumers.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: \$700,000
 - (b) On a continuing basis: \$700,000
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? License Fees, General Fund
- (7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment? No increase in fee amount is included. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The fee amount is in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(9) TIERING: Is tiering applied? 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? Kentucky Department of Agriculture shall 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

(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. The fee is set forth in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(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. The fee is set forth in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(c) How much will it cost to administer this program for the first year? 2019 program costs were \$50,000 for staff for the motor fuel program outside of testing costs.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the motor fuel 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 (+/-): Fees generated by participants are established in statute. Approximately \$150,000 in revenue was collected last year.

Expenditures (+/-): 2019 program costs were \$700,000 for staff for the motor fuel program.

Other Explanation:

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(Amended After Comments)

302 KAR 79:012. Motor fuel quality standards and specifications.

RELATES TO: KRS 363.900-363.908, 16 C.F.R. 306.12, 40 C.F.R. 80.27

STATUTORY AUTHORITY: KRS 363.902, 16 C.F.R. 306, 16 C.F.R. 309, 40 C.F.R. 80.27

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes motor fuel quality standards and specifications.

Section 1. Motor Fuel Quality Standards and Specifications.

(1) ~~If a motor fuel quality~~~~[When no]~~ ~~[When no]~~ standard ~~does not exist.~~ ~~[exists]~~ the department shall designate a test or specification based upon the most widely accepted scientific principles.

(2) If it is demonstrated that some impurity or imperfection exists in a motor fuel product offered for sale that renders it unfit for its intended purposes, the product shall ~~[may]~~ be subject to a Level 4 Civil Penalty.

(3) These requirements shall ~~[will]~~ not apply to any bulk fuel storage tanks where the product contained therein is being reconditioned and withheld from sale.

(4) Motor fuel containing less than one (1) percent by volume oxygenate, not dispensed from a dedicated hose, shall be subject to a Level 2 Civil Penalty.

(5) Gasoline and gasoline-oxygenate blends containing between zero (0) and up to fifteen (15) ~~[volume]~~ percent ~~by volume~~ ethanol shall ~~comply with paragraphs (a) through (f) of this subsection.~~ ~~[meet the following requirements:]~~

(a) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "premium" or "super" gasoline blends unless its AKI is greater than or equal to ninety-one (91).

(b) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "plus" or "mid-grade" gasoline unless its AKI is greater than or equal to eighty-nine (89).

(c) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "regular" gasoline unless its AKI is greater than or equal to ~~eighty-seven (87)~~ ~~[eighty-six (86)].~~

(d) Pursuant to KRS 363.902(2), gasoline and gasoline-oxygenate blends offered for sale at a retail facility shall conform to the most recent version of ASTM D4814, ~~[“]Standard Specification for Automotive Spark Ignition Engine Fuel,~~ ~~[“] with the following exceptions, as required by KRS 363.904(2):~~

1. For gasoline-ethanol blends containing between one (1) percent by volume and fifteen (15) percent ~~[ethanol]~~ by volume ~~ethanol~~, the ASTM International V/L ratio specification shall be waived; and~~[.]~~

2. For gasoline-ethanol blends containing between nine (9) percent and fifteen (15) percent by volume ethanol, the RVP shall be increased by one (1) pound per square inch.

(e) The maximum concentration of oxygenates permitted in gasoline-oxygenate blends shall be those permitted by the EPA ~~[section 214 of the]~~ under Clean Air Act, **42 U.S.C. 7545**, and applicable waivers ~~or with not more than sixteen (16) percent isobutanol. [as set forth in the published version of the NIST Handbook 130 for Gasoline and Gasoline-Oxygenate Blends and for Gasoline-Ethanol blends.]~~

(f) For gasoline and gasoline-oxygenate blends the Motor Octane Number (MON) shall not be less than eighty-two (82).

(6) Mid-level ethanol flex fuel blends containing between sixteen (16) and fifty (50) percent ~~[ethanol]~~ by volume ~~ethanol~~, shall meet the latest version of ASTM D7794, ~~[“] Standard Practice for Blending Mid-Level Ethanol Fuel blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines,~~ ~~[“] and~~

(7) Ethanol flex fuel blends containing between fifty-one (51) and eighty-three (83) percent ~~[ethanol]~~ by volume ~~ethanol~~ shall be blended, stored, and conveyed for consumption in accordance with the latest version of ASTM D5798, ~~[“] Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines,~~ ~~[“]~~

(8) M-85 Fuel Methanol shall meet the requirements ~~established [set forth]~~ in the most recent version of ASTM D5797, ~~[“]Standard Specification for Fuel Methanol M51-M85 for Automotive Spark-Ignition Engines,~~ ~~[“]~~

9) Diesel fuel that contains not more than five (5) percent by volume biodiesel or biomass-Based diesel shall meet the requirements ~~established [set forth]~~ in the latest version of ASTM D975, ~~[“]Standard Specification for Diesel Fuel,~~ ~~[“]~~

(10) All diesel fuels identified on retail dispensers and product transfer documentation with terms such as "premium," "super," "supreme," "plus," or "premier" shall meet the requirements ~~established [set forth]~~ in the published version of the NIST

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Handbook 130§2.2.1 for Premium Diesel Fuel.

(11) Diesel fuel that contains biodiesel between six (6) percent and twenty (20) percent, by volume, shall meet the requirements established [set forth] in the latest version of ASTM D7467, [“]Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20). [“]

(12) Biodiesel fuel blend stock intended for blending with diesel fuel shall meet the requirements established [set forth] in the most recent version of ASTM D6751, [“]Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels. [“]

(a) Biodiesel fuel blend stock shall be at least ninety-nine (99) percent biodiesel but no more than one (1) percent by volume diesel fuel [by volume].

(b) Biodiesel fuel blend stock with less than ninety-nine (99) percent biodiesel shall not be used as a commercial blend stock for biodiesel blends without written notification [approval] from the department.

(13) Aviation turbine fuels shall meet the requirements established [set forth] in the most recent version of the following standards, as applicable:

(a) ASTM D1655, [“]Standard Specification for Aviation Turbine Fuels. [“]

(b) ASTM D7223, [“]Standard Specification for Aviation Certification Turbine Fuel. [“]

(c) ASTM D7566, [“]Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons. [“]

(d) ASTM D6615, [“]Standard Specification for Jet B Wide-Cut Aviation Turbine Fuel. [“]

(14) Aviation gasoline shall meet the most recent version of the following standards, as applicable:

(a) ASTM D910, [“]Standard Specification for Leaded Aviation Gasoline. [“]

(b) ASTM D6227, [“]Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component. [“]

(c) ASTM D7547, [“]Standard Specification for Unleaded Only Aviation Gasoline. [“]

(15) Liquefied petroleum gases intended for use as motor fuel shall meet the requirements established [set forth] in the most recent version of ASTM D1835, [“]Standard Specification for Liquefied Petroleum (LP) Gases. [“]

(16) Racing Gasoline shall meet the requirements established [set forth] in the gasoline manufacturer's product specifications. Upon the request of the department, each conveyor of racing gasoline shall provide the department with a copy of the manufacturer's product specifications.

(17) Hydrogen fuel for fuel cell vehicles shall meet the requirements established [set forth] in the most recent edition of SAE J2719 Hydrogen Fuel Quality for Fuel Cell Vehicles. If ASTM International develops applicable standards for Hydrogen Fuel Quality, those standards shall prevail as rule.

(18) Compressed natural gas shall meet the requirements established [set forth] in the most recent edition of SAE J1616, [“]Recommended Practice for Compressed Natural Gas Vehicle Fuel. [“] [at such time that] If ASTM International develops applicable standards for compressed natural gas, those standards shall prevail as rule.

(19) LNG vehicle fuel shall meet the requirements established [set forth] in the most recent edition of SAE J2699 [“]Liquefied Natural Gas Vehicle Fuel. [“] [at such time that] If ASTM International develops applicable standards for LNG vehicle fuels, those standards shall prevail as rule.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "ASTM Standard D910-20a, (ASTM D910), Standard Specification for Leaded Aviation Gasolines", (2020);

(b) "ASTM Standard D975-20c, (ASTM D975), Standard Specification for Diesel Fuel", (2020);

(c) "ASTM Standard D1655-20d[e], (ASTM D1655), Standard Specification for Aviation Turbine Fuels", (2020);

(d) "ASTM Standard D1835-20, (ASTM D1835), Standard Specification for Liquefied Petroleum (LP) Gases", (2020);

(e) "ASTM Standard D4806-20, (ASTM D4806), Standard

Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark Ignition Engine Fuel", (2020);

(f) "ASTM Standard D4814-21[20a] (ASTM D4814), Standard Specification for Automotive Spark Ignition Engine Fuel", (2021);

(g) "ASTM Standard D5797-18, (ASTM D5797), Standard Specification for Methanol Fuel Blends (M51–M85) for Methanol-Capable Automotive Spark-Ignition Engines", (2018);

(h) "ASTM Standard D5798-20, (ASTM D5798), Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines", (2020);

(i) "ASTM Standard D6227-18, (ASTM D6227), Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component", (2018);

(j) "ASTM Standard D6615-15a, (ASTM D6615), Standard Specification for Jet B Wide-Cut Aviation Turbine Fuel", (2019);

(k) "ASTM Standard D6751-20a, (ASTM D6751), Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels", (2020);

(l) "ASTM Standard D7223-17, (ASTM D7223), Standard Specification for Aviation Certification Turbine Fuel", (2017);

(m) "ASTM Standard D7467-20a, (ASTM D7467), Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)", (2020);

(n) "ASTM Standard D7547-18a, (ASTM D7547), Standard Specification for Hydrocarbon Unleaded Aviation Gasoline", (2018);

(o) "ASTM Standard D7566-20c[b], (ASTM D7566), Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons", (2020);

(p) "ASTM Standard D7794-20, (ASTM D7794), Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines", (2020);

(q) "ASTM Standard D7901-20, (ASTM D7901), Standard Specification for Dimethyl Ether for Fuel Purposes", (2020);

(r) "National Institute of Standards and Technology Handbook 130, 2020 Edition Natl. Inst. Stand. Technol. Handb. 130, 2020 Ed., Uniform Fuels and Automotive Lubricants Regulation, IV, G, §2; (Nov. 2019)"

(s) "SAE J1616-201703, Standard for Compressed Natural Gas Vehicle Fuel, Society of Automotive Engineers International", (2017);

(t) "SAE J2699-201802, Liquefied Natural Gas (LNG) Vehicle Fuel, Society of Automotive Engineers International", (2018); and

(u) "SAE J2719-202003, Hydrogen Fuel Quality for Fuel Cell Vehicles, Society of Automotive Engineers International," (2020).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: March 12, 2021

FILED WITH LRC: March 15, 2021 at 11:39 a.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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed rule will permit a wider range of "alternative" fuels and require those fuels to meet specified standards. Additionally, the proposed rule will require that a person who sells and distributes automotive fuels, including "alternative" fuels, to make certain disclosures, and that retailers of automotive fuels, including "alternative" fuels, must post certain information, in connection with the sale thereof.

(b) The necessity of this administrative regulation: This administrative regulation adopts rules that set forth standards

relating to motor fuel quality, specifications, and sampling and testing methods.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363.902 directs the Commissioner of Agriculture, or his authorized agent, to implement and administer an inspection and testing program for motor fuels to ensure compliance with KRS 363.900 to 363.908. KRS 363.902 instructs that the standards set forth in the annual book of ASTM standards, supplements, and revisions shall be applied; and further that the department shall conform to any provisions of federal law or regulations which impose requirements in conflict with the ASTM standard.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the implementation of the statutes by modernizing language and creating clear guidance for motor fuel regulation in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes various sections to conform with drafting requirements and public comments.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform with drafting requirements and for proper responses to public comments.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 363.902 directs the Commissioner of Agriculture, or his authorized agent, to implement and administer an inspection and testing program for motor fuels to ensure compliance with KRS 363.900 to 363.908. KRS 363.902 instructs that the standards set forth in the annual book of ASTM standards, supplements, and revisions shall be applied; and further that the department shall conform to any provisions of federal law or regulations which impose requirements in conflict with the ASTM standard. This amendment does those things.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the implementation of the statutes by modernizing language and creating clear guidance for motor fuel regulation in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department of Agriculture, 2,800 retailers and possibly another 100 entities that are involved in the fueling industry.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Refiners, producers and distributors of motor fuels will benefit by adoption of the proposed amendment in that they will be allowed to offer new fuels, some or all of which may prove popular with consumers.

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

(a) Initially: \$700,000

(b) On a continuing basis: \$700,000

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? License Fees, General Fund

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment? No increase in fee amount is included. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The fee amount is in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

(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 Department of Agriculture shall 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

(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. The fee is set forth in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(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. The fee is set forth in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(c) How much will it cost to administer this program for the first year? 2019 program costs were \$50000 for staff for the motor fuel program.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the motor fuel 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 (+/-): Fees generated by participants are established in statute. Approximately \$700,000 in revenue was collected last year.

Expenditures (+/-): 2019 program costs were \$150,000 for staff for the motor fuel program.

Other Explanation:

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)**

401 KAR 61:036. Emission guidelines and compliance times for municipal solid waste (MSW) landfills.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 60 Subpart Cf [~~60.30e-60.36e~~], 42 U.S.C. 7411(d)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120, [~~60.30e-60.36e~~, 42 U.S.C. 7411(d)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes [requires] the [Environmental and Public Protection] cabinet to promulgate[prescribe] administrative regulations for the prevention, abatement, and control of air pollution. [The federal regulation incorporated by reference in] This administrative regulation provides for the control of emissions from existing municipal solid waste (MSW) landfills.

Section 1. Definitions. (1) Except as established in this section, terms used in this administrative regulation shall have the meaning established in 40 C.F.R. 60.41f, as published July 1, 2020.

(2) "Administrator" means the Secretary of the Energy and Environment Cabinet unless a specific provision of 40 C.F.R. Part 60, Subpart Cf, or an approved state plan as published in 40 C.F.R. Part 62, Subpart S states that the United States Environmental Protection Agency retains authority.

(3) "Affected facility" means each MSW landfill.

(4) "Classification date" means July 17, 2014.

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Section 2. Applicability. This administrative regulation shall apply to each affected facility that commenced construction, modification, or reconstruction on or before the classification date as defined in Section 1 of this administrative regulation.

Section 3. Compliance Requirements. ~~[(4)]~~ An owner or operator of an affected facility shall comply with **the applicable requirements established in:**

- ~~(1) [(2)]~~ 40 C.F.R. 60.31f, Designated Facilities, as published July 1, 2020;
- ~~(2) [(3)]~~ 40 C.F.R. 60.32f, Compliance Times, as published July 1, 2020;
- ~~(3) [(4)]~~ 40 C.F.R. 60.33f, Emission Guidelines for Municipal Solid Waste Landfill Emissions, as published July 1, 2020;
- ~~(4) [(5)]~~ 40 C.F.R. 60.34f, Operational Standards for Collection and Control Systems, as published July 1, 2020; ~~[(3)]~~
- ~~(5) [(6)]~~ 40 C.F.R. 60.35f, Test Methods and Procedures, as published July 1, 2020;
- ~~(6) [(7)]~~ 40 C.F.R. 60.36f, Compliance Provisions, as published July 1, 2020;
- ~~(7) [(8)]~~ 40 C.F.R. 60.37f, Monitoring of Operations, as published July 1, 2020;
- ~~(8) [(9)]~~ 40 C.F.R. 60.38f, Reporting Guidelines, as published July 1, 2020;
- ~~(9) [(10)]~~ 40 C.F.R. 60.39f, Recordkeeping Guidelines, as published July 1, 2020; and
- ~~(10) [(11)]~~ 40 C.F.R. 60.40f, Specifications for Active Collection Systems, as published July 1, 2020.

Section 4. A source shall submit a copy of all documentation required to be submitted to U.S. EPA pursuant to this administrative regulation to the cabinet. ~~[Incorporation by Reference. (1) 40 C.F.R. 60.30c to 60.36c, (40 C.F.R. 60, Subpart Cc), Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1997, is incorporated by reference.~~

~~(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:~~

- ~~(a) Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3999;~~
- ~~(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 4, Ashland, Kentucky 41102-8942, (606) 929-5285;~~
- ~~(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;~~
- ~~(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;~~
- ~~(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;~~
- ~~(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;~~
- ~~(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and~~
- ~~(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.]~~

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: March 15, 2021

FILED WITH LRC: March 15, 2021 at 10:05 a.m.

CONTACT PERSON: Chris Ewing, Environmental Scientist, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6604, fax (502) 564-4245, e-mail Christian.Ewing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Ewing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amendment adopts the federal Emission Guidelines (EG) for Municipal Solid Waste (MSW) landfills.

(b) The necessity of this administrative regulation: This administrative regulation amendment is necessary to reduce methane and non-methane emissions from municipal solid waste landfills. This amendment is necessary to develop a state plan for existing MSW landfills.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation amendment will address Clean Air Act (CAA) Section 111(d) requirements for existing MSW landfills. This administrative regulation amendment reduces methane and non-methane emissions from existing MSW landfills. This administrative regulation amendment will be part of the Kentucky 111(d) MSW landfill plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS 224.10-100(5) by reducing methane and non-methane emissions from existing MSW landfills, resulting in the protection of human health and the environment. This administrative regulation amendment will address requirements for a CAA Section 111(d) plan.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the applicable requirements for existing MSW landfills and clarifies when the EPA Administrator retains authority for specific provisions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide clarity to the regulated community.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by adopting the federal emissions guidelines necessary for a state 111(d) plan for existing MSW landfills and providing clarity of the applicable requirements.

(d) How the amendment will assist in the effective administration of statutes: The amendment assists in the effective administration of the statutes by adopting the federal emissions guidelines for existing MSW landfills and clarifying those requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation applies to existing MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014. This includes 28 existing MSW landfills.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will comply with the most recent federal emission guidelines for existing MSW landfills.

(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 costs to the regulated entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the sources will work with the state instead of US EPA.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this amendment initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this amendment on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the

implementation and enforcement of this amendment to this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. The requirements of this administrative regulation apply to each existing MSW landfill for which construction, reconstruction, or modification was commenced on or before July 17, 2014.

FISCAL NOTE ON STATE AND 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 amendment will affect owners and operators of the 28 existing MSW landfills in Kentucky.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-110, 224.20-120, 42 U.S.C. 7411, and 40 C.F.R. Part 60, Subpart Cf Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.

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 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 proposed administrative regulation will not generate 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? The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The Cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation amendment is in 40 C.F.R. Part 60, Subpart Cf and Subpart B pursuant to Clean Air Act (CAA) Section 111.

2. State compliance standards. This administrative regulation amendment adopts the federal standards for the control of methane and non-methane emissions from existing MSW landfills meeting the applicability provisions of the 40 C.F.R. Part 60, Subpart Cf Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise their CAA 111(d) plans to reduce the emissions of methane and non-methane substances.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation establishes the same requirements as the federal requirement for existing MSW landfills and will impose no more stringent requirements than those required by 40 C.F.R. Part 60, Subpart Cf.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities or requirements are not imposed.

LABOR CABINET
Department of Workers' Claims
(Amended After Comments)

803 KAR 25:092. Workers' compensation pharmacy fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.270, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the commissioner [~~Workers' Compensation Board~~] to periodically promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 shall be fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community. The increased security of payment afforded by the Workers' Compensation Act may be taken into consideration in determining what fees are reasonable. KRS 342.735 requires the commissioner [~~board~~] to establish administrative regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate charges for pharmaceuticals provided pursuant to KRS 342.020, and to expedite the payment of this class of medical expense benefits.

Section 1. Definitions. (1) "Brand drug" means a drug product identified as a brand by Medi-span or any other drug product commercially available from only one source. ["Brand name" has the meaning set forth in KRS 217.814(1).]

(2) "Compound" is defined in 803 KAR 25:270, Section 1(3).

(3) [(2)] "Equivalent drug product" has the meaning set forth in KRS 217.814(5).

(4) [(3)] "Generic drug" means a drug that is not a brand drug. ["Generic name" has the meaning set forth in KRS 217.814(6) [(2)].]

(5) [(4)] "Hospital" has the meaning set forth in 803 KAR 25:091, Section 1(1).

(6) "Medical payment obligor" is defined in 803 KAR 25:260(10).

(7) "Medical provider" is defined in 803 KAR 25:260(11). [(5)] "Practitioner" means any person licensed under the professional laws of Kentucky or any other state to prescribe and administer medicine and drugs.

(6) "Wholesale price" means the average wholesale price charged by wholesalers at a given time.

(8) "NDC number" means the unique 11 [10]-digit, 3-segment, number assigned to a drug product and maintained in the NDC Directory published by the U.S. Food and Drug Administration.

(9) "Pharmacist" is defined in 803 KAR 25:270 [260] (15).

(10) "Pharmacy benefit manager" means an entity licensed pursuant to KRS 304.9-053 that, on behalf of a medical payment obligor:

(a) Contracts directly or indirectly with pharmacies to provide prescription drugs to individuals;

(b) Administers a prescription drug benefit;

(c) Processes or pays pharmacy claims;

(d) Makes or assists in making prior authorization determinations on prescription drugs; or

(e) Establishes a pharmacy network.

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(11) "Prescription drug" is defined in 803 KAR 25:270(18).

(12) "Repackage" means the act of taking a finished drug product from the container in which it was distributed by the original manufacturer and placing it into a different container without further manipulation of the drug.

(13) "Usual and customary" means the charge a provider would apply to an otherwise uninsured patient.

Section 2. Payment for Pharmaceuticals. (1) Reimbursement shall be determined on the date of service. The maximum allowable reimbursement for prescription drugs shall be a dispensing fee of five (5) dollars and the lesser of:

(a) The provider's usual and customary charge for the drug; [

(b) The amount the medical payment obligor has agreed to pay under its contract with a pharmacy benefit manager or other pharmacy service provider, in which case, upon request, the medical payment obligor shall certify or otherwise disclose the applicable reimbursement provision contained in the contract;]

(b) [(e)] If it is a generic drug, eighty-five percent (85%) [sixty percent (60%)] of the average wholesale price of the lowest priced equivalent drug product; or

(c) [(d)] If it is a brand [name] drug, ninety percent (90%) [eighty-five percent (85%)] of average wholesale price.

(2) Average wholesale price shall be determined from the publication in effect on the date of service. The publication to be used is:

(a) Medi-Span, produced by Wolters-Kluwer;

(b) If the drug is not included in Medi-Span, then the Red Book, produced by Micromedex, shall be used.

(3) The usual and customary charge of the provider for the prescription drug must be included on each statement for services.

(4) A generic drug must be substituted for a brand [name] drug unless there is no equivalent drug product available or the prescribing medical provider indicates on the prescription that substitutions are prohibited [by including the words "Dispense as Written" or "No Substitution Allowed" along with a statement that the brand name drug is medically necessary].

(5) If a claimant chooses a brand [name] drug when a generic drug is available and allowed by the medical provider, the claimant shall pay the difference in price between the brand [name] and the generic drug as determined pursuant to subsection (1) of this section.

(6) A dispensing provider that is not a pharmacist shall be reimbursed the same as a pharmacist, but shall not receive a dispensing fee.[:]

(7) Repackaged or Compounded Drugs

(a) Pharmaceutical bills submitted for repackaged or compounded drugs must include the NDC Number of the original manufacturer registered with the U.S. Food and Drug Administration.

(b) Reimbursement shall be determined using the original manufacturer's NDC number for the product or ingredient, calculated on a per unit basis, as of the date of service. The maximum reimbursement limitations provided in subsection (1) of this section apply to each product or ingredient contained in the repackaged or compounded drug.

(c) An NDC number obtained for a repackaged or compounded drug shall not be considered the original manufacturer's NDC Number.

(d) If the original manufacturer's NDC Number is not provided on the bill, then the reimbursement shall be based on the average wholesale price of the lowest priced equivalent drug product, calculated on a per unit basis.

(e) A single compounding [dispensing] fee of \$20 shall [may] be reimbursed for a [repackaged or] compounded drug [when applicable].]

(1) An employee entitled to receive pharmaceuticals under KRS 342.020 may request and require that a brand name drug be used in treating the employee. Unless the prescribing practitioner has indicated that an equivalent drug product should not be substituted, an employee who requests a brand name drug shall be responsible for payment of the difference between the

equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock and the brand name drug wholesale price at the time of dispensing.

(2) Any duly licensed pharmacist dispensing pharmaceuticals pursuant to KRS Chapter 342 shall be entitled to be reimbursed in the amount of the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.]

[(8)][(3)] [If an employee's prescription is marked "Do Not Substitute," the employee shall receive a brand name drug.][the dispensing pharmacist shall be entitled to reimbursement in an amount equal to the brand name drug wholesale price, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.]

Section 3. Disputes; Applicability. (1) Any dispute arising under this administrative regulation may [shall] be resolved pursuant to 803 KAR 25:012 or 803 KAR 25:110(10).

(2) This administrative regulation shall apply to prescriptions dispensed to a workers' compensation patient by a hospital pharmacy if the patient is not otherwise being treated or obtaining medical care from the hospital.

(3) This administrative regulation shall not apply to prescriptions dispensed by a hospital pharmacy, of a hospital regulated pursuant to 803 KAR 25:091, to a workers' compensation patient receiving medical treatment or care from the hospital on an inpatient or outpatient basis.

(4) Any insurance carrier, self-insured employer, [or] group self-insured employer, or pharmacy benefit manager may enter into an agreement with any pharmacy or other provider [with any pharmacy] to provide reimbursement at a lower amount than that required in this administrative regulation.

Section 4. Balance Billing. No pharmacy filling a prescription covered under KRS 342.020 shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment by a workers' compensation patient of any charge in excess of that permitted under this administrative regulation, except as provided in Section 2(2)[(4)] of this administrative regulation. This prohibition is applicable to prescriptions filled pursuant to KRS 342.020 and any prescription which is denied or disputed by the medical payment obligor may be billed directly to the party presenting the prescription for filling.

ROBERT L SWISHER, Commissioner

APPROVED BY AGENCY: March 15, 2021

FILED WITH LRC: March 15, 2021 at 10:10 a.m.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of this administrative regulation is to regulate charges for pharmaceuticals provided pursuant to KRS 342.020, and to expedite the payment of this class of medical expense benefits.

(b) The necessity of this administrative regulation: Amendment to this administrative regulation is necessary to ensure reimbursement for pharmaceuticals is fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.035 requires the commissioner to periodically promulgate administrative regulations

to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 shall be fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community. The increased security of payment afforded by the Workers' Compensation Act may be taken into consideration in determining what fees are reasonable. KRS 342.735 requires the commissioner to establish administrative regulations to expedite the payment of medical expense benefits. This administrative regulation does so with respect to pharmaceuticals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement for pharmaceuticals.

(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 establishes the method by which reimbursement for pharmaceuticals is calculated.

(b) The necessity of the amendment to this administrative regulation: The current language created confusion; the amendment is to clarify the confusion.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates language to comply with the current methodology for reporting required claims information.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to those paying and receiving reimbursement for pharmaceuticals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Insurance companies writing workers' compensation policies in the Commonwealth, group of self-insurers, employers carrying their own risk, and those who dispense pharmaceuticals under the provisions of KRS Chapter 342.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will calculate reimbursement using the method in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question

(3): There will be no additional cost to perform the calculation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Reimbursement will be fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community.

(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: There should be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal 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 in fees or funding is 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 was amended after receiving comments; as a result, a compounding fee of \$20 was established. This fee is paid by a medical payment obligor to the compounding pharmacist.

(9) TIERING: Is tiering applied? Tiering is not applied; the

administrative regulation applies to all parties 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? The Department of Workers' Claims and all agencies or departments of government with employees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.020, 342.035, 342.260, 342.270, 342.735.

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. Without knowing the compensation to which employees of those agencies may be entitled under KRS Chapter 342, it is impossible to estimate the effect on expenditures; however, any change from current expenditures should be minimal.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional 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: There should be no increase or decrease in the cost to administer this amendment.

PROPOSED AMENDMENTS

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*.

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amendment)

201 KAR 2:040. Registration of pharmacist interns.

RELATES TO: KRS 315.010(16), 315.020(3), (4), 315.050(4), (5), 315.191(1)(h)
STATUTORY AUTHORITY: KRS 315.050(4), (5), 315.191(1)(a), (h)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Board of Pharmacy is required by KRS 315.050(4) to establish standards for pharmacy intern certification. KRS 315.191(1)(h) authorizes the board to establish an internship program for training, qualifications, and registration of applicants for registration of pharmacist interns. This administrative regulation establishes the standards for training, qualifications, and registration of pharmacist interns.

Section 1. Definitions. (1) "Academic experience program" means a course or series of courses taken by a pharmacist intern at a school or college of pharmacy approved by the board that involves actual practice of pharmacy experiences.

(2) "Preceptor" means the pharmacist who is responsible to the board for the practice of pharmacy experiences of a pharmacist intern.

Section 2. An applicant for registration as a pharmacist intern shall:

(1) File an Application for Registration as a Pharmacist Intern, Form I, with the board; and

(2) ~~[Attach a recent head and shoulders passport photograph, that is not a proof copy or plastic identification; and~~

~~(3)]~~ Submit proof of acceptance by a college or school of pharmacy approved by the board.

Section 3. An applicant for examination for licensure as a pharmacist shall:

(1) Complete 1,500 hours of internship;

(2) Be awarded credit for internship for hours worked in a pharmacy or in related research during the time the pharmacist intern is enrolled in an approved school or college of pharmacy;

(3) Not be awarded credit for hours worked in a pharmacy or in related research during the period the pharmacist intern is completing the academic experience program;

(4) Be limited to internship credit:

(a) Of forty-eight (48) hours per week during non-academic sessions if the pharmacist intern is in good standing with a college or school of pharmacy and the board; and

(b) Of twenty (20) hours per week during academic sessions in a college or school of pharmacy. The maximum credit allowed for this enrolled time shall be 500 hours;

(5) Be given credit for the following forms of internship:

(a) Completion of an academic experience program;

(b) Work performed in a pharmacy under the supervision of a preceptor;

(c) Work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a government body, college or university, pharmacy business, or other entity if the pharmacist intern has received prior approval by the board. The maximum credit allowed for this time shall be 400 hours and the pharmacist intern shall also file an essay of at least 500 words describing the work or research experience and the relation of the work or research to the practice of pharmacy, which shall be approved by the board president; or

(d) An internship performed outside of Kentucky if the:

1. Requirements for internship in that state are at least

equivalent to the requirements established in this administrative regulation; and

2. Board of licensure in that state has certified that the preceptor, pharmacy, government body, college or university, pharmaceutical business, or other entity is in good standing; and

(6) Not be awarded credit for an internship completed prior to registration with the board.

Section 4. A pharmacist intern shall:

(1) Be issued a Registration Identification Card;

(2) Carry the Registration Identification Card when on duty;

(3) Show it upon request to a member of the board or its authorized agent; and

(4) Notify the board within thirty (30) days of any charge of:

(a) A felony;

(b) A violation of drug laws; or

(c) A violation of alcohol laws.

Section 5. The registration of a pharmacist intern shall be revoked if the pharmacist intern is not:

(1) Currently enrolled in a college or school of pharmacy approved by the board;

(2) A current applicant for licensure as a pharmacist in Kentucky; or

(3) Awaiting the results of an examination.

Section 6. The registration of a pharmacist intern shall not be revoked when the intern is not currently enrolled in a college or school of pharmacy approved by the board if the board finds that:

(1) The intern is on a semester break; or

(2) Personal or family health concerns or other reasons beyond the control of the pharmacist intern necessitate a temporary absence from enrollment and the absence is approved by the board.

Section 7. A person who is not registered as a pharmacist intern shall not:

(1) Hold himself or herself out as a pharmacist intern; or

(2) Perform the duties of a pharmacist intern.

Section 8. (1) A preceptor shall be a pharmacist who:

(a) Has a license in good standing;

(b) Has been licensed by the board for at least one (1) year; and

(c) Has requested in writing to be designated as a preceptor.

(2) A preceptor shall be actively engaged in the practice of pharmacy in the location where the pharmacist intern performs his or her internship.

(3) The preceptor shall supervise only one (1) pharmacist intern at a time for the purpose of the intern obtaining credit for the practice of pharmacy experience, unless the pharmacist is supervising interns as a faculty member at a school or college pharmacy approved by the board during an academic experience program.

Section 9. Credit for Non-Academic Experience Programs. (1) Within ten (10) days of beginning an internship credit for non-academic experience program, a pharmacist intern shall submit a Pharmacist Preceptor's Affidavit, Form II.

(2) On or before graduation from a college or school of pharmacy, a pharmacist intern shall submit an Internship Report, Form III.

Section 10. Credit for Academic Experience Programs. (1) For a Doctor of Pharmacy degree, credit shall be awarded for each hour of successful completion of an academic experience program at a college or school of pharmacy approved by the board.

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(2) An academic experience program shall be reported on an Academic Experience Affidavit, Form IV, which shall be filed with the board upon completion of the academic experience program or prior to certification for examination.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Registration as a Pharmacist Intern", Form I, 03/2021 [~~11/2012~~];
- (b) "Pharmacist Preceptor's Affidavit", Form II, 03/2021; [~~11/2012~~]
- (c) "Internship Report", Form III, 03/2021 [~~11/2012~~]; and
- (d) "Academic Experience Affidavit", Form IV, 03/2021 [~~11/2012~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY A. HADLEY, R.PH., Executive Director

APPROVED BY AGENCY: March 10, 2021

FILED WITH LRC: March 10, 2021 at 9:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2021, 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 May 31, 2021. 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 professional responsibilities of a pharmacist and a pharmacist intern under supervision.
- (b) The necessity of this administrative regulation: KRS 315.191(1)(a) requires the board to promulgate administrative regulations necessary to regulate and control the practice of pharmacists. This administrative regulation establishes the professional responsibilities of a pharmacist and a pharmacist intern under supervision.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the professional responsibilities of a pharmacist and a pharmacist intern under supervision.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation removes the photograph requirement for the application and updates an abbreviation in the application.

(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 regulation amendments remove the photograph requirement for the application and updates an abbreviation in the

application.

(b) The necessity of the amendment to this administrative regulation: The photograph requirement is no longer required by Board policy and the administrative regulation needs to reflect that change.

(c) How the amendment conforms to the content of the authorizing statutes: The Kentucky Board of Pharmacy is required by KRS 315.050(4) to establish standards for pharmacy intern certification. KRS 315.191(1)(h) authorizes the board to establish an internship program for training, qualifications, and registration of applicants for registration of pharmacist interns. This administrative regulation establishes the standards for training, qualifications, and registration of pharmacist interns.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the application for interns to register with the Board of Pharmacy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacy students to be impacted by the amended language.

(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: Pharmacy students will have to familiarize themselves with the new amended language of the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for 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 administrative regulation establishes the professional responsibilities of a pharmacist intern under supervision.

(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 pharmacy students applying to be a pharmacist intern.

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 (+/-): 0
Expenditures (+/-): 0
Other Explanation:

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amendment)

201 KAR 2:205. Pharmacist-in-charge.

RELATES TO: KRS 315.020, 315.0351, 315.191, 315.300, 315.335

STATUTORY AUTHORITY: KRS 315.020(1), 315.0351, 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. KRS 315.020(1) and 315.0351(7) require applicants for pharmacy permits to place a pharmacist in charge as a prerequisite to compounding and dispensing privileges granted by the Kentucky Board of Pharmacy. This administrative regulation establishes the requirements relating to a pharmacist-in-charge.

Section 1. Definition. "Pharmacist-in-charge" means a pharmacist licensed in the Commonwealth of Kentucky [~~or in the appropriate jurisdiction of an out-of-state pharmacy holding a Kentucky Board of Pharmacy permit~~], who accepts responsibility for the operation of a pharmacy in conformance with all laws and administrative regulations pertinent to the practice of pharmacy and the distribution of prescription drugs and who is personally in full and actual charge of the pharmacy.

Section 2. Duties and Responsibilities. (1) The pharmacist-in-charge shall be so designated in the application for a permit to operate a pharmacy and in each application for renewal of that permit thereafter.

(2) A pharmacist shall not serve as a pharmacist-in-charge:

(a) For more than one (1) pharmacy at a time, except upon written approval from the Kentucky Board of Pharmacy; and

(b) Unless he or she is physically present in that pharmacy for a minimum of ten (10) hours per week or the amount of time appropriate to provide supervision and control.

(3) The pharmacist-in-charge shall be responsible for:

(a) Quality assurance programs for pharmacy services designed to objectively and systematically monitor care, pursue opportunities for improvement, resolve identified problems as may exist, and detect and prevent drug diversion;

(b) The procurement, storage, security, and disposition of drugs and the provision of pharmacy services;

(c) Assuring that all pharmacists and interns employed by the pharmacy are currently licensed;

(d) Providing notification in writing to the Board of Pharmacy

within fourteen (14) calendar days of any change in the:

1. Employment of the pharmacist-in-charge;

2. Employment of staff pharmacists; or

3. Schedule of hours for the pharmacy;

(e) Making or filing of any reports required by state or federal laws and regulations;

(f) Responding to the Kentucky Board of Pharmacy regarding identified violations or deficiencies; and

(g) Filing of any report of a theft or loss to:

1. The U. S. Department of Justice Drug Enforcement Agency as required by 21 C.F.R. 1301.76(b);

2. The Department of the Kentucky State Police as required by KRS 315.335; and

3. The board by providing a copy to the board of each report submitted.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Permit to Operate a Pharmacy in Kentucky" Form 1, 5/2020[07/2012];

(b) "Application for Non-Resident Pharmacy Permit", Form 3[1], 5/2020[07/2012];

(c) "Application for Resident Pharmacy Renewal", Form 2, 5/2020[07/2012]; and

(d) "Application for Non-Resident Pharmacy Permit Renewal", Form 4[2], 5/2020[07/2012].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY A. HADLEY, R.PH., Executive Director

APPROVED BY AGENCY: March 9, 2021

FILED WITH LRC: March 9, 2021 at 3:03 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2021 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 May 31, 2021. 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 pharmacist-in-charge at pharmacies permitted by the Kentucky Board of Pharmacy.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations necessary to regulate and control all matters relating to pharmacists and pharmacies. KRS 315.020(1) and KRS 315.0351(7) require applicants for pharmacy permits to place a pharmacist in charge as a prerequisite to compounding and dispensing privileges granted

by the Board of Pharmacy. This regulation dictates the responsibilities of a pharmacist-in-charge.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for the pharmacist-in-charge at pharmacies permitted by the Kentucky Board of Pharmacy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is essential for dispensing and compounding pharmacies to function. Pharmacist-in-charge requirements are established by this 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 only changes are the updated referenced applications.

(b) The necessity of the amendment to this administrative regulation. To update the referenced applications.

(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. The only amendment made is the update to the applications.

(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 updating the referenced applications

(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 use the updated applications for initial application and renewal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost would be to increase the annual permit fee by \$25.00, thus the fee will increase from \$100.00 to \$125.00. This fee increase was already approved with the amendment effective February 4, 2021 to 201 KAR 2:050.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will update the referenced applications only.

(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 is necessary in this regulation. An amendment to 201 KAR 2:050, effective February 4, 2021 increased the annual permit fee by \$25.00 for all four referenced applications.

(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 a resident pharmacy permit or a non-resident pharmacy permit.

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. 315.020, 315.035, 315.0351, 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. The fee increase effectuated by the amendment to 201 KAR 2:050 that applies to applications referenced in this regulation will generate approximately \$50,000 in revenue for the Kentucky Board of Pharmacy.

(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? 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 the first year.

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

Revenues (+/-): Approximately \$50,000

Expenditures (+/-): 0

Other Explanation:

BOARDS AND COMMISSIONS

Board of Pharmacy
(Amendment)

201 KAR 2:390. Requirements for third-party logistics providers[provider].

RELATES TO: KRS [~~315.002, 315.005,~~] 315.191(1)(a), 315.400[48], 315.4102, 315.4104, 315.4106, 315.4108, 315.4110
STATUTORY AUTHORITY: KRS 315.4102, 315.4104, 315.4106, 315.4108, 315.4110

NECESSITY, FUNCTION AND CONFORMITY: KRS 315.191(1)(a), 315.4102, 315.4104, 315.4106, 315.4108, and 315.4110 authorizes the board to promulgate administrative regulations to regulate third-party logistics providers. [KRS 315.4102 requires a third-party logistics provider to be licensed and that the board establish the renewal fee by administrative regulation. KRS 315.4104 requires a board-approved application, licensure fee, and accompanying information. KRS 315.4106 establishes eligibility factors for licensure and renewal. KRS 315.4108 identifies persons disqualified as owners and designated representatives of third-party logistics providers. KRS 315.4110 establishes criteria for lawfully conducting business as a third-party logistics provider in the Commonwealth of Kentucky.] This administrative regulation establishes requirements for the regulation of third-party logistics providers [to become licensed and operate].

Section 1. Definitions.

(1) "Component" means any raw material, ingredient, or article intended for use in the manufacture of a drug and drug-related device.

(2) "Distribution" or "distribute" has the same meaning given in

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KRS 315.400(5).

(3) “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.

(4) “Product” means a prescription drug in a finished dosage form for administration to a patient without substantial further manufacturing, such as capsules, tablets, and lyophilized products before reconstitution.

(5) “Suspect product” means a component, prescription drug, or drug-related device for which there is a reason to believe that such component, prescription drug, or drug-related device:

(a) Is potentially counterfeit, diverted, or stolen;

(b) Is potentially intentionally adulterated such that the component, prescription drug, or drug-related device 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 component, prescription drug, or drug-related device would result in serious adverse health consequences or death to humans or animals. [Application Requirements for Licensure Application and Renewal. (1) An applicant for initial licensure or renewal as a third party logistics provider shall submit:

(a) A non-refundable initial licensure or renewal fee of \$200 by check or money order made payable to the Kentucky State Treasurer;

(b) A complete, sworn, and notarized Application to Operate as a Third-Party Logistics Facility;

(c) Unless previously provided, documentation of licensure as a third-party logistics provider through proof of registration with either:

1. The secretary of the U.S. Department of Health and Human Services, Food and Drug Administration; or

2. The state in which the provider ships;

(d) Unless previously provided, copy of current inspection report conducted by the United States Food and Drug Administration, if applicable. If a current inspection report is not available from the United States Food and Drug Administration, the applicant shall submit an inspection report by:

1. The National Association of Boards of Pharmacy (NABP); or

2. The board’s authorized agent;

(e) A confirmation statement of the previous owner if ownership changed;

(f) Legal proof of any name change, if applicable;

(g) An explanation if an applicant, officer, partner, or director has ever been convicted of a felony or had a professional license or permit disciplined under federal, state, or local law;

(h) Ownership information for each partner, director, or officer, including:

1. Name and title;

2. Email addresses;

3. Federal employer identification number;

4. Address;

5. Phone number;

6. Social security number; and

7. Date of birth;

(i) State of incorporation or organization if the owner is a corporation; and

(j) Upon request, a list of all manufacturers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services.

(2) An applicant applying for any ownership or address change shall submit a non-refundable ownership change fee of \$100 and a change of address fee of \$100.

(3) Each License shall expire on June 30 following date of issuance, unless earlier suspended or revoked. There shall be a delinquent renewal fee of \$200 for failure to renew by June 30 of each year.]

Section 2. [General]Requirements. [A third-party logistics provider shall:](1) A third-party logistics provider providing services in the Commonwealth, including distributing into the Commonwealth, shall apply for a license from the Board of

Pharmacy in accordance with KRS 315.4102 and this administrative regulation.

(2) A separate license shall be required for each third-party logistics provider’s facility that provides services in the Commonwealth, including distributing into the Commonwealth, regardless of whether joint ownership or control exists.

(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.

(4) A license shall not be issued or renewed unless the applicant 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 United States Pharmacopoeia (USP) compendium requirements, USP Chapter 659, Packaging and Storage Requirements as incorporated by reference in 201 KAR 2:105. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of components, prescription drugs, or drug-related devices;

(b) Separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated, or recalled components, prescription drugs, or drug-related devices until they are destroyed or returned; and

(c) If applicable, provide proof of registration with the U.S. Food and Drug Administration (FDA) and U.S. Drug Enforcement Administration (DEA) and shall comply with all federal laws, state and local laws and regulations.

(5) A third-party logistics provider shall comply with all requirements as outlined in the Drug Supply Chain Security Act (DSCSA), 21 U.S.C 360eee-360eee-4, and other applicable federal laws.

(6) A third-party logistics provider shall establish a system to quarantine or destroy suspect or illegitimate product if directed to do so by the manufacturer, repackager, wholesaler distributor, dispenser, or authorized government agency.

(7) A third-party logistics provider shall have readily retrievable within forty-eight (48) hours [immediately provide], upon written request of the Board of Pharmacy or its agents, and maintain for Board of Pharmacy inspection, a list of all manufacturers, wholesale distributors, repackagers, and dispensers for whom the third-party logistics provider provides services;

(8)[(2)] A third-party logistics provider shall have readily retrievable within forty-eight (48) hours [immediately provide], upon written request of the Board of Pharmacy or its agents, and maintain for Board of Pharmacy inspection, a list of each partner, limited liability company member, [and] corporate officer or director, and facility manager, including a description of the duties and qualifications of each; and

(9)[(3)] Make available for board inspection, records of providing third-party logistics services involving prescription drugs, if such records are maintained; and] A third-party logistics provider shall have readily retrievable within forty-eight (48) hours, upon written request of the Board of Pharmacy or its agents, and maintain for Board of Pharmacy inspection, records with capability to trace the receipt and outbound distribution or disposition of components, prescription drugs, or drug-related devices and records of inventory.]

(4) Follow closure procedures established in 201 KAR 2:106, Section 2.]

Section 3. Qualifications for Licensure. (1) The Board of Pharmacy shall consider, at a minimum, the following factors in determining the eligibility for initial licensure and renewal of third-party logistics providers:

(a) Minimum considerations in KRS 315.4106(1);

(b) Any convictions of the applicant or its officers under any federal, state, or local laws relating to drugs, to include drug samples and controlled substances;

(c) The applicant’s and its officers’ past experience with distribution of prescription drugs and drug-related devices.

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including drug samples and controlled substances; and

(d) Compliance with the requirements under any previously granted license or permit, if any.

(2) The 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) 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, state, and local laws and regulations relating to prescription drugs and related devices; and

(b) That the applicant is equipped as to land, buildings, and security to properly conduct the business described in the application.

(4) A license issued pursuant to this administrative regulation [may be disciplined, suspended, or revoked for failure] failing to comply with the provisions of KRS 315.400, 315.4102, 315.4104, 315.4106, 315.4108, 315.4110, or this administrative regulation may result in discipline, suspension or revocation under KRS 315.121.

Section 4. Application, Fees, Renewals.

(1) An applicant for initial licensure or renewal as a third-party logistics provider shall submit:

(a) A non-refundable initial licensure or renewal fee of \$200 by check or money order made payable to the Kentucky State Treasurer;

(b) A complete, sworn, and notarized "Application to Operate as a Third-Party Logistics";

(c) Unless previously provided, documentation of licensure as a third-party logistics provider through proof of registration with either:

1. The FDA; or

2. The state in which the third-party logistics provider is located;

(d) Unless previously provided, copy of most current inspection report conducted by the FDA. If the most current inspection report is not available from the FDA, the applicant shall submit an inspection report by:

1. The National Association of Boards of Pharmacy (NABP); or

2. The resident state licensing or permitting authority's

authorized agent;

(e) A confirmation statement from the previous owner if ownership changed;

(f) Legal proof of any name change, if applicable;

(g) An explanation if an applicant, officer, partner, or director has ever been convicted of a felony or had a professional license or permit disciplined under federal, state, or local law;

(h) Ownership information for each partner, director, or officer, including:

1. Name and title;

2. Email addresses;

3. Federal employer identification number;

4. Address;

5. Phone number;

6. Social security number; and

7. Date of birth;

(i) State of incorporation or organization if the owner is a corporation; and

(j) Upon request, a list of all manufacturers, repackagers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services.

(2) An applicant applying for any ownership or address change shall submit a non-refundable fee of \$100.

(3) Each license shall expire on June 30 following date of issuance, unless earlier suspended or revoked. There shall be a delinquent renewal fee of \$200 for failure to renew by June 30 of each year.

Section 5. Standards. (1) Facilities.

(a) All facilities in which components, prescription drugs, or

drug-related devices are held shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations;

(b) All facilities shall meet all applicable federal, state, and local laws and regulations;

(c) A third-party logistics provider shall quarantine components, prescription drugs, or drug-related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated;

(d) A facility shall not be located in a residence; and

(e) A facility shall be located apart and separate from any pharmacy permitted by the Board of Pharmacy.

(2) Security.

(a) A third-party logistics provider shall be equipped with an alarm system to detect entry after hours.

(b) A third-party logistics provider shall assure 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, prescription drugs, or drug-related devices are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A third-party logistics provider shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in providing these services.

(3) Recordkeeping requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) Inventories and other records regarding the receipt and distribution or disposition of components, prescription drugs, or drug-related devices shall be maintained and readily retrievable within forty-eight (48) hours for inspection or photocopying by the Board of Pharmacy and authorized officials of any federal, state or local law enforcement agencies for a period of six (6) years. These records shall include:

1. The business name and address of the third-party logistics provider's client and the address of the location from which the component, prescription drugs, or drug-related devices were received;

2. The business name and address to whom the components, prescription drugs, or drug-related devices were distributed or disposed of;

3. The identity and quantity of the components, prescription drugs, or drug-related devices received and distributed or disposed of; and

4. The dates of receipt and distribution or disposition of the components, prescription drugs, or drug-related devices.

(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 any federal, state or local law enforcement agency.

(c) Third-party logistics providers shall maintain an ongoing list of verified persons or businesses to whom they ship prescription drugs and related devices.

(d) Third-party logistics providers may distribute components, prescription drugs, or drug-related devices only to the following, except as provided in KRS 315.0351(2) and KRS 315.404:

1. A currently permitted manufacturer;

2. A currently licensed wholesaler;

3. A currently licensed third party logistics provider;

4. A currently permitted pharmacy;

5. A currently licensed outsourcing facility;

6. A currently licensed practitioner;

7. A currently permitted repackager;

8. A currently licensed hospital, but only for use by or in that

hospital:

9. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes; or

10. Any other appropriately licensed or permitted facility in the jurisdiction in which it is located.

(4) Written policies and procedures.

(a) A third-party logistics provider shall establish, maintain, and adhere to written policies and procedures for the receipt, security, storage, inventory, and distribution or disposition of components, prescription drugs, or drug-related devices.

(b) There shall be written policies and procedures for identifying, recording, and reporting significant losses or thefts to the Board of Pharmacy, and, if applicable, the FDA and the DEA.

(c) There shall be written policies and procedures for protecting against, and handling 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) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(e) There shall be written policies and procedures as to the handling of any outdated, returned, or damaged prescription drugs and related devices. Any outdated, returned, or damaged components, prescription drugs, or drug-related devices shall be segregated.

(f) There shall be written policies and procedures by which the third-party logistics provider exercises control over the shipping and receiving of all components, prescription drugs, or drug-related devices within the operation.

(g) There shall be written policies and procedures for quarantining suspect product and illegitimate product if directed to do so by the respective manufacturer, repackager, wholesale distributor, dispenser, or authorized government agency.

(5) Handling recalls. A third-party logistics provider shall establish, maintain and adhere to a written policy and procedure in accordance with business agreements as to the handling of recalls and withdrawals of components, prescription drugs, or drug-related devices.

Section 6. Violations. (1) A third-party logistics provider shall not distribute components, prescription drugs, or drug-related devices directly to a consumer or a patient except as provided in KRS 315.0351(2).

(2) A third-party logistics provider shall not operate in a manner that endangers the public health.

(3) Violations of any of these provisions shall be grounds for action under KRS 315.121.

Section 7. Incorporation by Reference.

(1) "Application to Operate as a Third-Party Logistics [Facility] Provider", May 2020[July 2017], is incorporated by reference.

(2) "Application for Third-Party Logistics Provider License Renewal", May 2020, is incorporated by reference.

(3) These forms may be obtained, inspected, or copied, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024, 8:00 a.m. to 4:30 p.m. Monday through Friday.

LARRY A. HADLEY, Executive Director

APPROVED BY AGENCY: February 26, 2021

FILED WITH LRC: February 26, 2021 at 9:26 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2021 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 May 31, 2021. 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 acquiring and maintaining a license to be third-party logistics provider.

(b) The necessity of this administrative regulation: This administrative regulation establishes the requirements as authorized by KRS 315.4102-315.4110.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes application requirements for initial application and renewal, qualifications for a license, and other general requirements as authorized by KRS 315.4102-4110.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Third-party logistics providers are given greater direction on how to obtain a license and conduct business legally in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment conforms third-party logistics providers requirements to requirements of federal law under the DSCSA. Moreover, this amendment conforms third party logistic provider licensing requirements to the recently enacted amendments also made for manufacturers and distributors.

(b) The necessity of the amendment to this administrative (c) regulation: To ensure congruence with the DSCSA and congruence among regulatory requirements for manufacturers and wholesalers.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.4102-315.4110 address statutory requirements for third-party logistics providers. KRS 315.191 authorizes the Board of Pharmacy to promulgate regulations to implement and interpret KRS 315.4102-315.4110.

(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 third-party logistics providers and will clarify language to be consistent with other pharmacy regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately 250 entities will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The applicant will need to submit an application, pay a fee, and conduct business pursuant to the authorizing statutes and regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee has not changed with the proposed amendment. The board shall charge \$200 for the initial application

and each renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

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

(a) Initially: It costs approximately \$200 per licensee to license, inspect, and enforce applicable laws and regulations that pertain to third-party logistics providers.

(b) On a continuing basis: The board will incur costs of approximately \$200 per licensee annually on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this regulation shall be accomplished through license fees. The Board of Pharmacy generates its own revenues without contribution from the General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 applied to all applicants 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? 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 315.4102-4110 and KRS 315.191(1)(a) authorize the board to promulgate administrative regulations to regulate and control third-party logistics 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 amendment will not change the amount of revenue the Board of Pharmacy receives each year. Currently the Board receives \$200 per license, and the license fee is utilized in licensing, inspecting and enforcing the board's regulations.

(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 amendment is not projected to change board revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The costs to administer this licensing program are covered by the licensing fee of \$200.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years, as all licensees are required to pay \$200 and that covers the costs that the board incurs.

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

- Revenues (+/-):
Expenditures (+/-):
Other Explanation:

BOARDS AND COMMISSIONS
Board of Nursing
(Amendment)

201 KAR 20:506. Nurse licensure compact.

RELATES TO: KRS 314.475

STATUTORY AUTHORITY: KRS 314.131, 314.475

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.475, Article 1(c)2 requires the Board of Nursing to review any rule adopted by the Interstate Commission of Nurse Licensure Compact Administrators pursuant to Article VIII of KRS 314.475 within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates by reference the rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators and the bylaws.

Section 1. The Kentucky Board of Nursing shall comply with all bylaws, rules, and administrative regulations of the Interstate Commission of Nurse Licensure Compact Administrators, which includes The Interstate Commission of Nurse Licensure Compact Administrators, Final Rules as of January 1, 2021 [2019], and Bylaws as of August 3, 2017, and as amended August 15, 2017.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Interstate Commission of Nurse Licensure Compact Administrators, Final Rules", January 2021 [2019]; and

(b) "The Interstate Commission of Nurse Licensure Compact Administrators, Bylaws", August 2017.

(2)(a) 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 am to 4:30 p.m.; or

(b) This material may also be obtained on the Kentucky Board of Nursing's Web site at https://kbn.ky.gov/apply/Pages/NLC/compact.aspx.

(3) This material may also be obtained at:

(a) The Interstate Commission of Nurse Licensure Compact Administrators, 111 East Wacker Drive, Suite 2900, Chicago, IL 60601; or

(b) https://www.ncsbn.org/nlcrules.htm [enhanced-nlc-implementation.htm].

JESSICA WILSON, President

APPROVED BY AGENCY: February 18, 2021

FILED WITH LRC: February 25, 2021 at 2:36 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, May 24, 2021 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 until end of day (11:59 p.m.) Monday, May 31, 2021. 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: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 415-3964, email Morgan.Ransdell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements KRS 314.475, the Nurse Licensure Compact.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 314.475, Article 1(e)(2) requires rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators to be promulgated as administrative regulations pursuant to KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.475, which requires this promulgation.

(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 following the mandate contained in KRS 314.475, Article 1(e)(2).

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the material incorporated by reference, by replacing "The Interstate Commission of Nurse Licensure Compact Administrators, Final Rules", January 2019, with the Interstate Commission of Nurse Licensure Compact Administrators, Final Rules", January 2021. Three new rules have been added, each of which is described below: Rule 408 – Federal Criminal Records; Rule 409 – Active Duty Military Personnel or Their Spouses; and Rule 502 – Dispute Resolution. Rule 408 does not modify existing law or KBN practices in any way, but merely codifies within compact rules the prohibition on the release of National Crime Information Center (NCIC) reports received by party states to the compact, even as between the Interstate Commission of Nurse Licensure Compact Administrators and party states to the compact. Rule 409 does not modify existing law or KBN practices in any way, but merely codifies within compact rules the recognition of an active duty military member's ability to designate any state in which the member is licensed as the primary state of residence during the period of service. Rule 502 sets the method for dispute resolution that applies when compact party states have a dispute related to the compact. It is very similar to the dispute resolution mechanism that existed under the prior iteration of the Nurse Licensure Compact.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because KRS 314.475, Article 1(e)(2) requires rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators to be promulgated as administrative regulations pursuant to KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 314.475, which requires this promulgation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by following the mandate contained in KRS 314.475, Article 1(e)(2).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 88,000 nurses licensed in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary.

(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 imposed by this administrative regulation, as nothing in the newly promulgated compact policies requires that any specific action be taken by KBN licensees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Nothing in the newly promulgated compact policies requires that any specific action be taken by KBN licensees.

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

(a) Initially: There is no additional cost, as the preexisting procedures of the Kentucky Board of Nursing comply with the new compact policies.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied, as the changes apply to all 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? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.475.

(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? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional 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:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:115. Definition of psychological testing.

RELATES TO: KRS 319.010

STATUTORY AUTHORITY: KRS 319.032(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish and define the scope of practice within the field of psychology. This administrative regulation establishes parameters of psychological testing.

Section 1. Definition. "Psychological testing" [means] is defined as the use of one (1) or more standardized measurement instruments, devices, or procedures including the use of

computerized psychological tests, to observe or record human behavior, and which require the application of appropriate normative data for interpretation or classification and includes the use of standardized instruments for the purpose of the diagnosis and treatment of mental and emotional disorders and dis-abilities, the evaluation or assessment of cognitive and intellectual abilities, personality and emotional states and traits, and neuropsychological functioning.

Section 2. Psychological Tests. Psychological tests may include a version or reformulation of one (1) of the following:

(1) Individual tests for the evaluation of cognitive and intellectual abilities, examples of which are:

- (a) The Wechsler [series] intelligence scales;
- (b) The Stanford-Binet intelligence scales;[and]
- (c) The Kaufman Assessment Battery for Children;

(2) Individual, objective, and projective tests of personality and emotional states and traits, examples of which are:

- (a) The Minnesota Multiphasic Personality Inventory; [and]
- (b) The Millon Clinical Multiaxial Inventory;
- (c) The Millon Adolescent Clinical Inventory;[and]
- (d) Projective techniques including:
 - 1. The Rorschach Ink Blots;
 - 2. Thematic Apperception Test; [and]
 - 3. The Holtzman Ink Blots; and

(3) Individual tests of neuropsychological functioning, examples of which are:

- (a) The Halstead-Reitan Battery;
- (b) The Luria-Nebraska Battery;
- (c) The "Lezak or Kaplan Battery"; and
- (d) The NEPSY (A Developmental Neuropsychological Assessment).

Section 3. Services that are described as "psychological testing" shall only be administered and interpreted by persons credentialed by this board or who meet the formal academic training and experience qualifications established in KRS Chapter 319 and these regulations [~~described above~~] and who are otherwise exempt by statute.

(1) Persons credentialed by this board, as well as other licensed or certified professionals, may also use tests of language, education, and achievement, as well as tests of abilities, interests, and aptitudes. With the exception of the test categories and psychological tests listed in Section 2 of this administrative regulation, the use of these other tests is not exclusively within the scope of this administrative regulation.

(2) [~~Members of other professions~~] Persons not credentialed by this Board shall not train or supervise any person in performing psycho-logical testing.

(3) The practice of psychology shall be construed within the meaning of the definition contained in KRS 319.010(7) without regard to [ff] whether payment is received for services rendered.

(4) Services that are described as "psychological testing[~~and treatment~~]" shall be administered to minor children only upon the notification of and the granting of written permission by the parent or legal guardian, unless otherwise required by the courts subject to specific state or federal law.

JEAN A. DETERS, PSY. D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 28, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 28, 2021, this hearing will be done by video teleconference. A link to the teleconference will be posted on the Board website. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This regulation sets forth a definition for psychological testing, provides certain psychological tests included in the definition of psychological testing, and requires that services described as psychological testing shall only be administered and interpreted by persons credentialed by this Board or who meet the formal academic training and experience qualifications established in KRS Chapter 319 and these regulations and are otherwise exempt by statute. Further, this administrative regulation provides that certain tests of language, education, achievement, abilities, interests, and aptitudes may be used by persons credentialed by this Board as well as other licensed or certified professionals, that persons not credentialed by this Board shall not train or supervise any person in performing psychological testing, that the definition of the practice of psychology in KRS 319.010(7) shall be construed without regard to whether payment is received for services rendered, and that notification to and written permission of a parent or legal guardian is required before administering psychological testing to minor children unless otherwise required by the courts subject to specific state or federal law.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes definitions relating to the regulation chapter.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment adds or amends definitions for terms in the regulation chapter.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update definitions of terms.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes definitions of terms for those regulations.

(d) How the amendment will assist in the effective

administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for the practice of psychology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated definitions of terms.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of terms.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS Board of Examiners of Psychology (Amendment)

201 KAR 26:121. Scope of practice and dual licensure.

RELATES TO: KRS 319.010, 319.015, 319.032(1)(b), 319.050(7)

STATUTORY AUTHORITY: KRS 319.032(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the board to promulgate administrative regulations establishing and defining scope of practice within the field of psychology. This administrative regulation establishes the required scope of practice for licensed psychologists who hold the health service provider designation, licensed psychologists, certified psychologists, certified psychologists with autonomous functioning, licensed psychological associates, and licensed psychological practitioners.

Section 1. A license holder shall not practice or present himself or herself outside the area or areas of competency specified in the application for a license and approved by the board based upon examination and review of qualifications, training, and experience, unless the credential holder has obtained additional education, training, experience, or supervision appropriate to the new practice area.

Section 2. Scope of Practice. (1) A licensed psychologist who holds the health service provider designation, a licensed psychologist, a certified psychologist with autonomous functioning, a certified psychologist, a licensed psychologist associate, or a licensed psychological practitioner may:

(a) Work in various health care service delivery settings; and

(b) Provide one (1) or more of the following direct or supportive services:

1. Diagnosis of an emotional, mental, nervous, or addictive disorder, including mental health conditions or an adjustment problem of an individual or group through the use of psychological testing or other techniques;

2. Evaluation or assessment of the functioning of an individual, group, or organization;

3. Treatment of an emotional, mental, nervous, or addictive disorder, including mental health conditions, or an adjustment problem of an individual or group;

4. Intervention or a preventive technique that facilitates the functioning of an individual, group, or organization;

5. Consultation services;

6. Program planning or development services;

7. Evaluation of a psychological or human service program; or

8. Supervision of health service delivery by a licensed psychologist who holds the health service provider designation, as established in 201 KAR 26:171.

9. The practice of psychology shall be construed within the meaning of the definition contained in KRS 319.010(7) without regard to whether payment is received for services rendered.

(2) All license holders from this board shall restrict their practice to the delivery of specific services for which they are competent based on professional education, training, and experience.

Section 3. Dual Credentialing. (1) An individual who holds both a license to practice psychology from this board and a mental health credential from another regulatory board authorized by a Kentucky statute shall:

(a) Inform the recipient of a particular service under which license the provider is practicing; and

(b) Not participate in the “practice of psychology” as defined by KRS 319.010 under the auspices of another credential, recognizing that some activities are exempted by KRS 319.015.

(2) Psychological testing as defined by 201 KAR 26:115 shall not be delivered under a credential other than a license issued by the Board of Examiners of Psychology.

JEAN A. DETERS, PSY.D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 28, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 28, 2021, this hearing will be done by video teleconference. A link to the teleconference will be posted on the Board’s website. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the required scope of practice for licensed psychologists who hold the health service provider designation, licensed psychologists, certified psychologists, certified psychologists with autonomous functioning, licensed psychological associates, and licensed psychological practitioners.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the required scope of practice for licensed psychologists who hold the health service provider designation, licensed psychologists, certified psychologists, certified psychologists with autonomous functioning, licensed psychological associates, and licensed psychological practitioners.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies procedures for the required scope of practice for licensed psychologists who hold the health service provider designation, licensed psychologists, certified psychologists, certified psychologists with autonomous functioning, licensed psychological associates, and licensed psychological practitioners.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify procedures for the required scope of practice for licensed psychologists.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for the required scope of practice for licensed psychologists.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for the required scope of practice for licensed psychologists.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated procedures for the required scope of practice for licensed psychologists.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for the required scope of practice for licensed psychologists.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:125. Health service provider designation.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: KRS 319.032(2), 319.050(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(7) requires that the designation of "health service provider" shall be required for a licensed psychologist who supervises a psychological health care service. KRS 319.032(2) authorizes the board to promulgate administrative regulations necessary to administer KRS Chapter 319. This administrative regulation establishes the requirements for the granting of that designation.

Section 1. (1) The designation "health service provider" shall refer to a licensed psychologist who is authorized under KRS 319.050(7) and this administrative regulation to clinically supervise a certified psychologist, licensed psychological practitioner, temporarily licensed psychologist, licensed psychological associate, or a graduate-level psychology student in providing psychological health care services.

(2)(a) Except as provided by paragraph (b) of this subsection, a licensed psychologist who does not have the designation "health service provider" shall not clinically supervise psychological health care services.

(b) A temporarily licensed psychologist or a licensed psychologist may provide concurrent clinical supervision to graduate students while under clinical supervision of a psychologist with a health service provider designation.

Section 2. Psychological health care services shall include delivery of diagnosis, assessment, psychotherapy, treatment, or other therapeutic services to individuals, couples, families, or groups whose growth, adjustment, or functioning is impaired or who otherwise seek psycho-logical health care services.

Section 3. (1) A health service provider shall be a licensed psychologist who has completed appropriate training and clinically supervised experience in psychological health service delivery at the doctoral level. The training and experience may occur in a variety of psychological health care delivery sites. The training and supervised experience shall include:

(a) 1,800 hours of clinically supervised experience as established in subsection (2) of this section; or

(b) Certification as established in subsection (3) of this section.

(2) 1,800 Hours of Clinically Supervised Experience.

(a) The 1,800 hours of clinically supervised experience shall be within one (1) or more health care settings in which the licensed psychologist delivered direct psychological health care services, pursuant to Section 2 of this administrative regulation, in addition to the 3,600 supervised experience hours required for licensure as a li-censed psychologist under 201 KAR 26:190.

(b) The clinical supervision shall be provided by a licensed psychologist with the health service provider designation approved by the board and shall consist of one (1) hour of individual supervision each week.

(3) Certification. The licensed psychologist shall:

(a)1. Hold a Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB) or a successor organization;

2. Be board-certified by the American Board of Professional Psychology (ABPP) or a successor organization; or

3. Hold a Certificate from the National Register of Health Service Providers in Psychology or a successor organization;

(b) Have a minimum equivalent of five (5) years of full time practice at the independent practice level; and

(c) Have had no disciplinary action taken by a licensure board or on record in the ASPPB data base.

JEAN A. DETERS, PSY. D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 28, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 28, 2021, this hearing will be done by video teleconference. A link to the teleconference will be posted on the Board's website. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the requirement that a licensed psychologist must hold the health service provider designation to provide clinical supervision for licensed psychologists.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the requirement that a licensed psychologist must hold the health service provider designation to provide clinical supervision for licensed psychologists.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies that a licensed psychologist must hold the health service provider designation to provide clinical supervision for licensed psychologists, distinguishing clinical supervision from business supervision.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify standing for the required supervision for licensed psychologists.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes requirement that a licensed psychologist must hold the health service provider designation to provide clinical supervision for licensed psychologists.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish the requirement that a licensed psychologist must hold the health service provider designation to provide clinical supervision for licensed psychologists.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated requirement that a licensed psychologist must hold the health service provider designation to provide clinical supervision for licensed psychologists.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of the requirement that a licensed psychologist must hold the health service provider designation to provide clinical supervision for licensed psychologists.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:130. Grievances and administrative complaints.

RELATES TO: KRS 319.005, 319.032, 319.082, 319.118, 319.990

STATUTORY AUTHORITY: KRS 319.032(1)(k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(k) requires the board to promulgate administrative regulations that establish the procedure for investigating complaints or suspected violations of KRS Chapter 319 and

notifying proper law enforcement authorities. KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology or using the title of psychologist, licensed psychologist, certified psychologist, licensed psychological practitioner or licensed psychological associate. KRS 319.082 delineates the causes for which disciplinary action may be taken against a credential holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations of applicable statutes, administrative regulations, and orders of the board. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. KRS 319.032 authorizes the board to develop guidelines for use in complaints involving alleged sexual misconduct by a licensed holder, and for training of investigators in these matters. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of administrative complaints asserted against credential holders or applicants for licenses.

Section 1. Definitions.

- (1) "Administrative complaint" means a formal administrative pleading authorized by the board that sets forth charges against a credential holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.
- (2) "Board" is defined in KRS 319.010(2), and for purposes of this administrative regulation, shall also refer to a hearing panel.
- (3) "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or 201 KAR Chapter 26.
- (4) "Grievance" means any allegation alleging misconduct by a licensed holder or applicant or alleging that an unlicensed person is engaging in the practice of psychology or using the title of psychologist.
- (5) "Order" means the whole or any part of a final disposition of a hearing.
- (6) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.
- (7) "Respondent" means the person against whom a grievance or administrative complaint has been made.

Section 2. Grievance.

- (1) Source. A grievance may be initiated by:
 - (a) The board;
 - (b) The public; or
 - (c) Any governmental agency.
- (2) Form.
 - (a) A grievance shall:
 - 1. Be in writing through use of hard copy or digital forms provided by the board;
 - 2. Clearly identify the [person] licensee against whom the grievance is being made;
 - 3. Contain the date the grievance is initiated;
 - 4. Clearly identify the complainant through printed name, contact information and signature [Identify by printed name and signature the person making the grievance]; and
 - 5. Contain a clear and concise statement of the facts giving rise to the grievance including the relationship of the complainant to the licensee.
 - 6. Indicate if the grievance arises out of a court-involved evaluation, consultation, treatment or psychoeducation of a person(s);
 - 7. Provide consent or a means of acquiring consent for investigations involving minors or adults under guardianship from their legal guardian(s);
 - 8. Provide a waiver of confidentiality for the complainant and the complainant's minor children or wards, if applicable.
 - (b) A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid grievance.
 - (c) The board shall not accept or process anonymous grievances or administrative complaints.

(3) A grievance shall be filed with the Board at its designated office or place of business, or by e-mail. [Receipt. A grievance may be received by any:

- (a) Board member;
- (b) Credential holder designated by the board; or
- (c) Staff member.]
- (4) Response. A copy of the grievance shall be provided to the respondent by the board in a timely manner along with additional information and documents supplied by the complainant throughout the administrative process.

(5) The respondent shall have [fifteen (15)] twenty (20) days to file a written response to the grievance with the board.

(6)[(5)] Initial review [At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or a panel of the board shall review the grievance and response. At that time, the board shall determine if an investigation is warranted, and if so, the board may appoint one (1) of its members or any agent or representative of the board to conduct an investigation of the grievance.] of the grievance by the complaint screening committee:

(a) All grievances will be assigned an identification number and be referred to as such to ensure anonymity.

(b) At the next subsequent regularly-scheduled meeting of the board's designated complaint screening committee or as soon thereafter as practicable, the complaint screening board or a panel committee of the board shall review the grievance and response as well as determine if the matter is within the board's jurisdiction. At that time should all necessary information for decision making be available, the complaint screening committee may recommend:

- 1. Dismissal of the grievance if the complaint screening committee determines there is no evidence of a violation of law or ethics as provided by the statutes or regulations pertaining to the practice of psychology; if it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the complaint screening committee shall notify the complainant and the respondent that no further action shall be taken at the present time.

- 2. Investigation;
- 3. Tabling the decision to allow for acquisition of additionally requested information, which may include a fitness for duty evaluation; or
- 4. Referral of the grievance to the full board for further review and action; or
- 5. Issuing a voluntary assurance of compliance to unlicensed individuals whom engage in the practice of psychology.

(7)[(6)] Investigation. The board shall make available investigators to explore the ethical and professional conduct of respondents related to the filing of grievances.[

(a) The respondent shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time he or she may respond further to the allegations of the grievance. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Consideration of grievance, and investigative report.
 1. The board shall determine if there has been a prima facie violation of KRS 319.082 based on consideration of the:

- a. Grievance;
- b. Investigative report, if an investigation was warranted under subsection (5) of this section; and
- c. Psychological or physical examination, if one was ordered under Section 6 of this administrative regulation.

2. If the investigator is a member of the board, the investigating member shall not vote on disposition of the grievance.

3. If it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the board shall notify the person making the grievance and the respondent that no further action shall be taken at the present time.

4. If it is determined that there is a prima facie violation, the board shall:

- a. Issue an administrative complaint against the credential

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holder or applicant;

- b. File suit to enjoin the violator; or
- c. Seek criminal prosecution pursuant to KRS 319.990.]

(a) The investigator shall review the factors and variables within the grievance that are pertinent to the practice of psychology and consider the circumstances the board's review is required.

(b) The respondent shall be contacted by the investigator or board administrator to begin the investigation. With the consent of the respondent, a meeting may be scheduled at which time he or she the respondent may further respond reply to further to the allegations of the grievance. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(b) 1. If the grievance pertains to a minor(s) or any person under legal guardianship as a consumer, collateral or participant of the investigation, the investigator will acquire consent from all involved legal guardians of the minor(s) or ward(s) prior to proceeding with the investigation, unless otherwise ordered by a court of law.

2. If the grievance arises out of a court-involved evaluation, treatment or psychoeducation of a person whereby the respondent's engagement was affiliated with a legal action, the investigator shall secure information from all involved parties, as well as judicial officers and other involved professionals concerning the role of the respondent and the purpose and scope of the respondent's court-affiliation. The investigator will also secure information from opposing parties and other stakeholders in the legal process when assessing the role of the respondent in legal proceedings and how the role is related to the grievance.

3. Investigators will consider information from multiple data-gathering methods in order to increase accuracy and objectivity.

4. Investigators shall strive to use a balanced and fair process of investigation through collection of valid collateral source information that demonstrates sufficiency and reliability.

5. In the investigation of the grievance, the investigator shall review all data provided from both the complainant and the respondent as well as answer to all requested information from the board.

6. Investigators will perform reasonable inquiry when confronted with information about a possible violation of law or ethics; however, the scope of the investigation shall be delineated by grievance.

7. Investigators will be free from multiple relationships and conflicts of interest prior to acceptance and through completion of the investigation.

8. If the investigator is a member of the board, the investigating member shall not vote on disposition of the grievance.

9. Investigators will complete the investigation in less than sixty (60) days from the respondent's final interview. When extensions are needed, the investigator will inform the complaints screening committee of the reason for the extension as well as an estimated date of completion in fourteen (14) day intervals.

(8) Report of investigation. Upon the completion of the investigation, the person or persons making the investigation shall submit a written report to the board complaints screening committee containing a succinct statement of the facts disclosed discovered by in the investigation. The investigator will also acknowledge incomplete, unreliable or missing data.

(9) After consideration of the grievance and investigative report by the complaint screening committee, the committee may consider the options in paragraph (6)b of this section.

1(a) If referred to the board, the board shall determine if there has been a prima facie violation of KRS 319.082 based on consideration of the following, with the weight it sees fit:

- 1. Grievance;
- 2. Response;
- 3. Investigative report, if an investigation was warranted; and
- 4. Fitness for duty examination, if an examination was warranted

(10) If it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the board shall notify the person making the grievance and the respondent that no further action shall be taken at the present time.

(11) If it is determined that there is a prima facie violation, the

board shall:

a. Issue an administrative complaint against the credential holder or applicant;

b. File suit to enjoin the violator; or

c. Seek criminal prosecution pursuant to KRS 319.990.

Section 3. Administrative Complaint. If the board determines that the grievance shall be made an administrative complaint, the administrative complaint shall be adjudicated pursuant to KRS Chapter 13B.

Section 4. Administrative Response. Within twenty (20) days of service of the formal administrative complaint, the respondent shall file with the board a written response to the specific allegations set forth in the administrative complaint. Allegations not properly responded to shall be deemed admitted, and may form the basis for a default adjudication against the [person] respondent subject to the administrative complaint if the requisite elements of a violation are admitted. The board may, for good cause, permit the late filing of a response.

Section 5. Allegations of Sexual Misconduct by a License Holder.

(1) To assure confidentiality for the complainant, the alleged victim's name shall not be used in any written document. This individual shall be identified by initials only or by some other mechanism for identification adopted by the board.

(2) Upon request, the testimony of the alleged victim may be taken by deposition in order to assure his or her confidentiality.

(3) To protect the confidentiality of all parties, the board may issue an order restraining all parties and their representatives, including counsel, from any discussion or release of information about the allegations outside of the investigative and hearing processes.

(4) In accordance with the provisions of KRS 319.032(1)(d), the board may hold some or all of the hearing procedures in closed session.

Section 6. Fitness for Duty Examination.

(1) If there is reasonable cause to believe that a credential holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the credential holder or applicant to submit to an examination by a psychologist or other health care provider designated by the board to determine the credential holder's or applicant's fitness and competence to practice psychology.

(2) The expense of this examination shall be borne by the board.

(3) The board shall then consider the findings and conclusion of the examination.

(4) A copy of the examination shall be provided by the board to the respondent. The respondent may file with the board a written response to the examination within fifteen (15) days of the date on which the findings and conclusion of the examination was provided to the respondent.

(5)(a) Based on consideration of the psychological or physical examination, the board shall determine if there has been a prima facie violation of KRS 319.082.

(b) If it is determined that the findings and conclusion of the examination do not constitute a prima facie violation of KRS 319.082, the board shall so notify the person.

(c) If it is determined that there is a prima facie violation of KRS 319.082, the board shall is-sue an administrative complaint against the credential holder or applicant.

Section 7. Board Member Training for Cases of Sexual Misconduct.

(1) Within six (6) months of their appointment, all board members and investigators shall undergo specialized training to cover the content specified by KRS 319.032(1)(e).

(2) An investigator shall not be assigned to cases where sexual misconduct has been alleged until the required training has been completed.

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(3) Training shall consist of a three (3) hour course which includes the content specified by KRS 319.032(1)(e) and may be delivered by means of either live presentation, individual tutorial, or electronic media.

JEAN A. DETERS, PSY. D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 28, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 28, 2021, this hearing will be done by video teleconference. A link to the teleconference will be posted on the Board website. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for grievances and administrative complaints. This administrative regulation further sets certain requirements regarding: who may initiate a grievance; the form of the grievance; where the grievance shall be filed; sending a copy of the grievance to the respondent who shall have twenty days to file a response; the initial review of the grievance and response by the board; an investigation if the board determines one is warranted, including contacting the respondent, a right to representation at an investigation meeting, and a report of investigation; consideration of the grievance, response, investigation, and certain other information by the board; and the board's determination and any further actions to take as a result of the determination. Additionally, this administrative regulation establishes that any administrative complaint shall be adjudicated pursuant to KRS Chapter 13B and the requirements for the respondent's response to an administrative complaint. This administrative regulation also sets certain requirements regarding fitness for duty examinations and for board member training for cases of sexual misconduct.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for grievances and administrative complaints.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies procedures for grievances and administrative complaints.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update procedures for grievances and administrative complaints.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for grievances and administrative complaints.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for the practice of psychology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated procedures for grievances and administrative complaints.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for grievances and administrative complaints.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: 319.032(1) (a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychologist. This administrative regulation establishes the requirements for applicants for licensure, and the conditions for a temporary license.

Section 1. Application. (1) An application for a credential as a licensed psychologist ~~[and for temporary licensure]~~ and as a temporarily licensed psychologist may be submitted after the requirements established in KRS 319.050(2) are met to the Board or to an online application management system contracted by the Board for the purposes of application screening, as the Board directs.

(2) The application made to the Board or to the online application management system ~~[shall be made by submitting a completed Application for Licensure as a Psychologist to the board. The application shall:]~~ shall include:

(a) ~~[Include]~~ a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of ~~[his or her]~~ their knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; ~~[and]~~

(b) ~~[Be accompanied by:]~~ Payment of the application fee made payable to the Kentucky State Treasurer if the application is processed through the Board, or payment shall be made to the

online application management system as directed by the Board.

~~1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160.;~~

2. Three (3) recommendations from persons qualified to evaluate the applicant's professional ability within five (5) years from the date of application, including two (2) persons who have received a doctorate in psychology (Ph.D., PsyD., Ed.D.). The recommendations shall be submitted on the Recommendation Form for Licensure as a Psychologist; and

3. An official transcript for all levels of education required for licensure. Transcripts must be received in sealed envelopes or electronically directly from the school or a third-party clearinghouse.

Section 2. Temporary Licensure. (1) Pending successful completion of required examinations, an applicant may request permission to practice psychology at the doctoral level on a temporary basis pursuant to KRS 319.050(3). The request for a temporary credential shall be cosigned by the candidate and the proposed supervisor, who shall be a licensed psychologist with health service provider certification approved by the board.

(2) Supervision during the period of temporary licensure shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(3) A report of supervision shall be submitted on a regular basis as required by 201 KAR 26:171, Section 6.

(4) The candidate shall take the national EPPP within one (1) year of the board's written approval of temporary licensure.

(5)(a) A temporary license shall be valid for one (1) year from the date of the notice of approval by the board.

(b) During the period of temporary licensure, a candidate shall:

1. Successfully complete all credentials and examination procedures;

2. Pass the EPPP; and

3. Pass the examinations on psychological practice, ethical principles, and ~~[the]~~ Kentucky law within one (1) year of the date of the notice of approval by the board for a temporary license.

(c)1. A candidate shall score at least an eighty (80) percent to pass the ~~[structured]~~ jurisprudence examination of Kentucky mental health law.

2. A candidate shall score a 100 percent to pass the oral examination on ethical principles and professional practice.

(6)(a) Under exceptional circumstances and upon written request cosigned by the board approved supervisor, the board may approve an extension of the period of temporary licensure.

(b) If a temporary licensee requires an extension after one (1) year, the licensee may request a six (6) month extension.

(c) After the six (6) months, a second extension may be requested for an additional six (6) months.

(d) After a total of two (2) years for temporary licensure, the licensee may request a second temporary license following the aforementioned steps.

(e) If after two (2) years on the second temporary license another extension is requested, the licensee may request a third temporary license following the aforementioned steps.

(f) Licensees shall not exceed a total of six (6) years of extensions for all temporary licenses nor hold a temporary license for longer than six (6) years.

(g) All extensions are provided by the board at the board's discretion.

(b) A licensee shall submit a completed Request for Extension of Temporary Licensure as a Psychologist to request an extension.

Section 3. (1) An individual who submits an Application for Licensure as a Psychologist and has been approved by another state to take the EPPP shall submit:

(a) The official notice of the results of the EPPP from the state psychology regulatory board that approved the (a) The official notice of the results of the EPPP from the state board that approved the applicant to take the EPPP; or

(b) A request to ASPPB to release the results of the EPPP to the board and notify the board of the submission of the request.

(2) The applicant shall submit the official notice or notification

of the request to ASPPB to the board within thirty (30) days of taking the examination.

Section 4. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which candidates who have completed their degree requirements may begin to practice psychology under supervision of a board-approved supervisor, as established in 201 KAR 26:190.

(1) Upon acceptance of employment or the beginning of the required period of supervision, the candidate and the licensed psychologist who shall serve as his or her supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice shall be deemed as grounds for disciplinary action against the candidate and the supervisor.

(2) The candidate shall ensure that all materials are forwarded to the board within thirty (30) days from the date of employment or supervision. Once the application is complete, the board shall review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if the application material is insufficient to take any action, he or she shall be notified by the board and directed to cease practice until the requirements are met or the necessary documentation has been submitted.

(3) Under no circumstances shall the grace period be extended beyond sixty (60) days. Candidates who fail to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in Section 3(1) of this administrative regulation, the candidate is deemed to be practicing psychology under the jurisdiction of the board, and shall comply with KRS Chapter 319 and 201 KAR Chapter 26.

Section 5. Incomplete Application. An incomplete application shall ~~be denied two (2) years from the date of filing~~ be determined to be expired one (1) year from the date of filing, and may be destroyed.

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

(a) "Application for Licensure as a Psychologist", [~~February 2017~~] March 2021;

(b) "Recommendation Form for Licensure as a Psychologist", [~~February 2017~~] March 2021; and

(c) "Request for Extension of Temporary Licensure as a Psychologist", [~~February 2017~~] March 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Examiners of Psychology, 500 Mero Street [~~941 Leewood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the Board's Web site.

JEAN A. DETERS, PSY.D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 28, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 28, 2021, this hearing will be done by video teleconference. A link to the teleconference will be posted on the Board's website. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the procedures for applications for licensure and temporary licensure.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for applications for licensure and temporary 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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies the procedures for applications for licensure and temporary licensure.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify procedures for applications for licensure and temporary licensure.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for applications for licensure and temporary licensure.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish the procedures for applications for licensure and temporary 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 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated procedures for applications for licensure and temporary licensure.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of the procedures for applications for licensure and temporary licensure.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:171. Requirements for clinical supervision.

RELATES TO: KRS 319.032(1)(l), 319.050(3), (6), 319.056(4), (5), 319.064(3), (5), 319.082(1), 319.092(3)(d), 319.118(1)

STATUTORY AUTHORITY: KRS 319.032(1)(l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the clinical supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board. This administrative regulation establishes the requirements for clinical supervision.

Section 1. Board Approval Required.

(1) Except for graduate students as provided in Section 14 of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both clinical supervisor and supervisee petitioning the board in writing.

(2) If there is a change in clinical supervisor or in the supervisory arrangement, the clinical supervisor and supervisee shall:

(a) Proceed with the change as soon as practicable so as to avoid a lapse of clinical supervision for the supervisee; and

(b) Notify the board within thirty (30) days of the change for approval of the change of clinical supervisor or supervisory arrangement.

(3) It shall be the joint responsibility of the clinical supervisor and supervisee to assure that all reports, plans and goals, or other records of a supervisory relationship required by KRS Chapter 319 or these administrative regulations, are complete and filed with the board in a timely manner.

Section 2. Clinical Supervision Requirements.

(1) All clinical supervision requirements shall:

(a) Be met with individual, face-to-face, weekly contact between clinical supervisor and supervisee except as provided in subsection (2) of this section and Sections 11 and 14 of this administrative regulation; and

(b) Include additional clinical supervision sessions as needed.

(2) An alternative format of clinical supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board.

Section 3. Relief from Clinical Supervision Requirements During Inactive Period.

(1) A certified psychologist or licensed psychological associate may petition the board to be relieved of his or her obligation to maintain clinical supervision during which period he or she shall not practice psychology.

(2) The certified psychologist or licensed psychological associate shall obtain a clinical supervisor approved by the board before the resumption of practice.

(3) Upon resumption of practice, the certified psychologist or licensed psychological associate shall:

(a) Document compliance with continuing education requirements; and

(b) Report on his or her activities and employment related to psychology during the period without clinical supervision.

Section 4. Training and Continuing Education for Clinical Supervisors.

(1) A licensed psychologist with health service provider designation who has been approved by the board as a clinical supervisor shall attend a board approved training session in clinical supervisory practices within twelve (12) months of obtaining approval as a supervisor.

(2) A board approved clinical supervisor shall obtain a minimum of three (3) continuing education hours in clinical

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supervision theory or techniques in each three (3) year renewal cycle as required by 201 KAR 26:175, Section 2(4)(a). The board shall suspend its approval of a clinical supervisor if the clinical supervisor does not complete the required continuing education.

Section 5. Clinical Supervisor Obligations.

(1) The clinical supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The clinical supervisor shall report to the board an apparent violation of KRS 319.082(1) on the part of the supervisee.

(3) The clinical supervisor shall inform the board immediately of a change in the ability to clinically supervise, or in the ability of a supervisee to function in the practice of psychology in a competent manner.

(4) The clinical supervisor shall control, direct, or limit the supervisee's practice as appropriate to ensure that the supervisee's practice of psychology is competent.

(5) The clinical supervisor of record shall be responsible for the practice of psychology by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the clinical supervisor of record.

(6) For each person supervised pursuant to KRS 319.050(3), (6), 319.056(4), (5), 319.064(3), (5), or 319.092(3)(d), the clinical supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) years after the last date of clinical supervision.

Section 6. Clinical Supervisory Report.

(1) In calculating the amount of time spent in full-time practice while under clinical supervision, 1,800 hours of supervised practice shall be equivalent to one (1) year of experience.

(2) The clinical supervisor shall submit a Supervisory Report to the board of the clinical supervision of each supervisee according to the following schedule:

CREDENTIAL STATUS	REPORTING PERIOD	REPORT DUE DATE(S)
(a) Licensed psychological associate or certified psychologist with 4 or more years of full-time practice, or its equivalent	Every 2 years (with prior board approval)	Anniversary date of supervisee's licensure
(b) Licensed psychological associate or certified psychologist with fewer than 4 years of full-time practice, or its equivalent	Yearly	Anniversary date of supervisee's licensure
(c) Temporarily licensed psychologist	Every 6 months and 1 month prior to [structured] jurisprudence exam	
(d) Temporarily licensed psychological associate	Every 6 months	
(e) Sanctioned credential holder	Quarterly	January, April, July, and October 15th

(3) The report shall include:

(a) A description of the frequency, format, and duration of clinical supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses of the supervisee; and

(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. Multiple Clinical Supervisors.

(1) If a supervisee has more than one (1) board-approved

clinical supervisor, the clinical supervisors shall be in direct contact with one another at least once every six (6) months, and they shall provide Supervisory Plans and Goals to the board and copies to one another.

(2) A request to have more than two (2) clinical supervisors at one (1) time shall require a special application to the board which shall include detailed information as to how the clinical supervisors shall communicate and coordinate with each other in providing the required clinical supervision.

Section 8. Clinical Supervisor Responsibilities. The clinical supervisor of record shall:

(1) Review and countersign psychological assessments as appropriate based on the supervisee's level of experience;

(2) Review treatment plans, progress notes, and correspondence as needed to assess the competency of the supervisee to render psychological services;

(3) Jointly establish with the supervisee Supervisory Plans and Goals that shall be submitted to the board at the beginning of the supervisory relationship. The Supervisory Plans and Goals shall:

(a) Be updated or revised and submitted to the board with the regular report of clinical supervision;

(b) Include intended format and goals to be accomplished through the supervisory process; and

(c) Include methods that the clinical supervisor and supervisee shall employ to evaluate the supervisory process;

(4) Have direct observation of the supervisee's work:

(a) For a licensed psychological associate or a certified psychologist with less than four (4) years of full-time, post-licensure practice, or its equivalent, or a licensure candidate with temporary permission to practice, direct observation shall take place at least once every two (2) months;

(b) For a licensed psychological associate or certified psychologist with more than four (4) years of full-time, post-licensure practice, or its equivalent, direct observation shall take place as needed;

(c) Direct observation may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror, or as a co-therapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload as appropriate to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 9. Supervisee Responsibilities. (1) The supervisee shall:

(a) Keep the clinical supervisor adequately informed at all times of his or her activities and ability to function; and

(b) Seek clinical supervision as needed in addition to a regularly scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the clinical supervisor in establishing Supervisory Plans and Goals and in completing the regular Supervisory Reports;

(b) Be jointly responsible with the clinical supervisor for ensuring that a Supervisory Report has been sent to the board in accordance with the reporting schedule established in Section 6(2) of this administrative regulation; and

(c) Report to the board an apparent violation of KRS 319.082(1) on the part of the clinical supervisor.

Section 10. Identification of Provider. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the certified psychologist, licensed psychological associate, temporary licensed psychologist, trainee, or other provider and supervised by the licensed psychologist.

Section 11. Frequency of Clinical Supervision.

(1) A licensed psychological associate or certified psychologist shall have a minimum of one (1) hour of individual face-to-face clinical supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following licensure.

(2) After two (2) years of full-time, post-licensure practice, or its equivalent, the clinical supervisor and supervisee may petition the board using a Request for Change of Supervisor and/or Frequency to alter the format, frequency, or duration of supervision if the proposed change includes a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of clinical supervision is not less than four (4) hours per four (4) week period. This petition may include a request to change the format from individual to group clinical supervision. Clinical Supervision requirements for part-time practice may be modified at the discretion of the board upon approval of the submitted plan.

(3)(a) After four (4) years of full-time, post-licensure practice, or its equivalent, the clinical supervisor and supervisee may petition the board for further modification of the format, frequency, or duration of supervision using a Request for Change of Supervisor and/or Frequency, if the proposed change includes a minimum amount of one (1) hour of face-to-face clinical supervision per month. Additional modifications of the format, frequency or duration of clinical supervision may be submitted for approval by the board.

(b) Upon a change of clinical supervisor, a new Supervisory Plans and Goals shall be submitted by the clinical supervisor and supervisee to the board for approval. This plan may require additional clinical supervision than was previously approved by the board.

(c) Upon termination of the supervisor-supervisee relationship, the final Supervisory Report shall be submitted to the board within thirty (30) days of the termination.

(4) Any change in the frequency or duration of clinical supervision under this section may not occur automatically, but only upon a written request to the board and approval of the request by the board.

Section 12. Clinical Supervision of a Disciplined Credential Holder.

(1) The board shall appoint an approved clinical supervisor to supervise a disciplined credential holder for the period of time defined by the board.

(2) The disciplined credential holder shall be responsible for paying the fee for clinical supervision.

(3) The clinical supervisor shall have completed the board approved training course in supervision.

(4) The clinical supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined credential holder and the board liaison to:

1. Summarize the actions and concerns of the board;
2. Review the goals and expected outcomes of clinical supervision submitted by the board liaison;
3. Develop a specific plan of clinical supervision; and
4. Review the reporting requirements that shall be met during the period of clinical supervision;

(c) Meet with the disciplined credential holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to ensure that the disciplined credential holder's practice is in compliance with KRS Chapter 319 and 201 KAR Chapter 26;

(f) Report to the board any apparent violation of KRS 319.082(1) on the part of the disciplined credential holder;

(g) Immediately report to the board in writing a change in the ability to clinically supervise, or in the ability of the disciplined credential holder to function in the practice of psychology in a competent manner;

(h) Review and countersign psychological assessments as

needed or appropriate;

(i) Review treatment plans, notes, and correspondence as needed or appropriate;

(j) Have direct observation of the disciplined credential holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined credential holder's caseload;

(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined credential holder; and

(m) Have knowledge of the disciplined credential holder's physical and emotional well-being when it has direct bearing on the disciplined credential holder's competence to practice.

(5) The clinical supervisor shall control, direct, or limit the disciplined credential holder's practice as appropriate to ensure that the disciplined credential holder's practice is competent.

(6) The clinical supervisor shall contact the board liaison with any concern or problem with the disciplined credential holder, his or her practice, or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the clinical supervision. The meeting shall include the clinical supervisor, disciplined credential holder, and board liaison. A written summary of the supervision shall be submitted by the clinical supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 13. Board Liaison for Disciplined Credential Holder.

The board shall appoint a board member to serve as a liaison between the board and the approved clinical supervisor. The board liaison shall:

(1) Recruit the clinically supervising psychologist from a list provided by the board;

(2) Provide the clinically supervising psychologist with the originating complaint, agreed order, or findings of the hearing and supply other material relating to the disciplinary action as deemed appropriate by the liaison;

(3) Ensure that the clinically supervising psychologist is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board pursuant to KRS 319.118(1) and has immunity commensurate with that of a board member;

(4) Provide the clinically supervising psychologist with a written description of the responsibilities of the clinical supervisor and a copy of the responsibilities of the liaison;

(5) Ensure that the board has sent a written notification letter to the disciplined credential holder. The notification letter shall:

(a) State the name of the supervising clinical psychologist; and

(b) Specify that the disciplined credential holder shall meet with the clinical supervising psychologist and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the clinically supervising psychologist and disciplined credential holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding clinical supervision requirements for a disciplined credential holder, and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;

(7) Submit the report of supervision to the board for approval. The liaison shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting. In the interim, the clinically supervising psychologist and disciplined credential holder shall continue to meet;

(8) Remain available to the clinically supervising psychologist to provide assistance and information as needed;

(9) Report any problem or concern to the board regarding the supervision and communicate a directive of the board to the clinically supervising psychologist;

(10) Review the quarterly report of supervision and forward the report to the supervision committee of the board for approval; and

(11) Meet with the clinically supervising psychologist and the disciplined credential holder at the end of the term of supervision to summarize the clinical supervision.

Section 14. Psychology Graduate Students. Graduate-level psychology students who are providing services in psychological health care settings including independent practice settings shall:

(1) Be clinically supervised by a psychologist licensed by the Board of Examiners of Psychology with health service provider status, licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists, or by a licensed mental health professional approved by the training program who is affiliated with either the university training program or the practice setting;

(2) Be registered for credit in his or her course of study;

(3) Clearly identify their status as unlicensed psychology trainees to all clients and payers[payors];

(4) Give to all clients and payers[payors] the name of the licensed psychologist responsible for their work; and

(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a license from the board.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Supervisory Plans and Goals", December 2018;

(b) "Supervisory Report", December 2018; and

(c) "Request for Change of Supervisor and/or Frequency", October 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street, [914 Leawood Drive,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JEAN A. DETERS, PSY.D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Alternately, the public hearing may be conducted by way of Zoom if the Mayo-Underwood Building is still closed due to the pandemic. A Zoom link will be posted on the Board website if necessary. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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.

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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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a

credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision.

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(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision.

(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 Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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(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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

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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:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity.

RELATES TO: KRS 319.032(1)(i)

STATUTORY AUTHORITY: KRS 319.032(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license through reciprocity. This administrative regulation establishes the requirements for licensure as a psychologist by reciprocity.

Section 1. The board shall issue a license to an applicant who qualifies for a license as a psychologist pursuant to an agreement of reciprocity entered into by the board of this jurisdiction with the board or boards of any other jurisdiction or multiple jurisdictions.

Section 2. The applicant for licensure as a psychologist by reciprocity shall:

(1) Submit a completed Application for Licensure as a Psychologist by Reciprocity;

(2) Hold a current valid license in good standing to practice psychology that has been granted by at least one (1) state or the District of Columbia, or a U.S. Territory, or a Canadian province that maintains a psychology registration board:

(a) That is a constituent member of the Association of State and Provincial Psychology Boards (ASPPB); and

(b) With whom this board has an agreement of reciprocity;

(3) Have a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and

(4) Has not been disciplined by any licensure board.

Section 3. The board shall conduct an examination on psychological practice of an applicant for licensure by reciprocity. The applicant shall demonstrate an acceptable level of knowledge of Kentucky mental health law. An applicant shall score at least an eighty (80) percent to pass the [structured] jurisprudence examination of Kentucky mental health law. An applicant shall score a 100 percent to pass the oral examination on ethical principles and professional practice.

Section 4. An applicant for licensure with the health service provider designation shall comply with KRS 319.050(7).

Section 5. If an applicant for licensure with the health service provider designation does not have an additional 1,800 hours of supervised experience as required by KRS 319.050 and 201 KAR 26:125, the board may determine that the applicant's practice experience is equivalent to the required year of experience. The board may substitute an applicant's employment experience for the additional 1,800 hours of supervised experience as required by KRS 319.050 and 201 KAR 26:125, and may award the applicant the Health Service Provider designation.

Section 6. A person holding the Certificate of Professional Qualification in Psychology (CPQ) issued by the ASPPB or a successor organization or a person who holds a certificate from the National Register of Health Service Providers in Psychology, the American Board of Professional Psychology (ABPP), or a successor organization and has a minimum equivalent of five (5) years of full-time practice at the independent level and has had no disciplinary action taken by a licensure board or on record in the ASPPB database shall:

(1) Be deemed to meet the qualifications for licensure by reciprocity as established in this administrative regulation; and

(2) Upon meeting the requirements established in Section 3 of this administrative regulation, shall be granted a license with the health service provider designation.

Section 7. An applicant for licensure as a psychologist by

reciprocity may request permission to practice psychology at the doctoral level on a temporary basis pursuant to KRS 319.050(3). The request for a temporary credential shall be issued in accordance with 201 KAR 26:155, Section 2. The temporary credential shall expire in accordance with 201 KAR 26:155, Section 2(5).

Section 8. Incomplete Application. An incomplete application shall be determined to be expired one (1) year from the date of filing and may be destroyed.

Section 9. Incorporation by Reference. (1) "Application for Licensure as a Psychologist by Reciprocity", [~~February 2017~~] March 2021, is incorporated by reference. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street [~~911 Leewood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may be directly viewed on the agency's Web site, www.psy.ky.gov.

JEAN A. DETERS, PSY.D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 28, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 28, 2021, this hearing will be done by video teleconference. A link to the teleconference will be posted on the Board's website. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures and requirements for licensure by reciprocity. This administrative regulation further sets certain requirements regarding: submission of a completed application; holding a current valid license from certain jurisdictions; minimum full-time practice; disciplinary record; and the conduct of an examination by the board on psychological practice of an applicant and the passing scores on the structured examination of Kentucky mental health law and the oral examination on ethical principles and professional practice. Additionally, this administrative regulation establishes: that applicants shall comply with KRS 319.050(7); minimum supervised experience, and the Board's ability to determine equivalent practice experience, substitute

employment experience, and award the Health Service Provider designation, and that incomplete applications shall be denied one year from the date of filing. This administrative regulation also sets certain requirements regarding: deeming applicants to meet qualifications for licensure by reciprocity based on certain conditions; an applicant's request to practice psychology at the doctoral level on a temporary basis pursuant to KRS 319.050(3). The administrative regulation also incorporates material by reference.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for licensure by reciprocity.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies procedures for licensure by reciprocity.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update procedures for licensure by reciprocity.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for licensure by reciprocity.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for the practice of psychology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated procedures for licensure by reciprocity.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for licensure by reciprocity.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.

RELATES TO: KRS 319.032(1) (a), (i), 319.050(2)
STATUTORY AUTHORITY: KRS 319.032(1) (i)
NECESSITY, FUNCTION, AND CONFORMITY: KRS

319.032(1) (a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure. KRS 319.032(1) (i) requires the board to promulgate an administrative regulation governing reciprocal agreements with other states. This administrative regulation establishes the requirements for granting a license to an applicant who is licensed in another state that does not have an agreement of reciprocity with this board.

Section 1. (1) The board shall consider an applicant for licensure in psychology in Kentucky who:

(a) Is licensed in another state that does not have an

agreement of reciprocity with the Kentucky Board of Examiners of Psychology;

(b) Holds a current valid license or certificate, in good standing, to practice psychology that has been granted by:

- 1. At least one (1) state;
2. The District of Columbia; or
3. A Canadian province that maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards (ASPPB);

(c) Has a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and
(d) Has not been disciplined by any psychology licensure board.

(2) The board shall consider if the applicant meets the requirements established in KRS 319.050(2). If an applicant for licensure does not have the supervised experience as required by KRS 319.050(2)(d), the board may determine that the applicant's practice experience is equivalent to the required supervised experience based upon the information submitted in the application.

(3) An applicant for licensure as a psychologist shall submit:

(a) A completed Application for Licensure of a Psychologist Licensed in Another State with the supplementary documentation required by this subsection to the Board or to an online application management system contracted by the Board for the purposes of application screening, as the Board directs;

(b) Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. PsyD., Ed.D.);

(c) An official transcript for all levels of education required for licensure. Transcripts must be received in sealed envelopes or electronically directly from the school or a third-party clearinghouse;

(d) A Curriculum Vitae that demonstrates five (5) years of full-time practice of psychology;

(e) To the Examination for Professional Practice in Psychology (EPPP):

- 1. Developed by the ASPPB examination contractor; and
2. Owned by the ASPPB;

(f) A verified computerized EPPP scaled score of 500 or greater. The board shall accept the applicant's previous examination results for the national EPPP examination if the original test scores satisfied the doctoral licensure requirement as to criterion level at the time of that examination; and

(g) [Payment of \$200] Payment of the application fee made payable directly to the Kentucky State Treasurer if the application is processed through the Board or payment shall be made to the online application management system as directed by the Board.

(4) The board shall review the applicant's:

- (a) Record as to complaints or hearings held in previous jurisdictions; and
(b) Professional references.

Section 2. An applicant for licensure as a psychologist shall submit to a [structured] jurisprudence examination on Kentucky mental health law.

An applicant shall score at least an eighty (80) percent to pass the [structured] jurisprudence examination of Kentucky mental health law.

Section 3. In addition to meeting the requirements in Section 2 of this administrative regulation, an applicant for licensure as a psychologist shall submit to a [structured] oral examination on ethical principles and professional practice administered by two (2) licensed psychologists.

(1) Each examiner shall independently rate the applicant's performance.

(2) The applicant shall demonstrate an acceptable level of knowledge in each of the areas in order to pass the examination.

(3) An applicant who receives a pass rating from the two (2) examiners shall have successfully passed the oral examination and shall be eligible to be granted a license as a licensed

psychologist.

(4) An applicant shall score a 100 percent to pass the oral examination on ethical principles and professional practice.

JEAN A. DETERS, PSY.D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Alternately, the public hearing may be conducted by way of Zoom if the Mayo-Underwood Building is still closed due to the pandemic. A Zoom link will be posted on the Board website if necessary. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for granting licensure as a psychologist to an applicant licensed in another state.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for granting licensure as a psychologist to an applicant licensed in another state.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies procedures for granting licensure as a psychologist to an applicant licensed in another state.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update procedures for granting licensure as a psychologist to an applicant licensed in another state.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes

procedures for granting licensure as a psychologist to an applicant licensed in another state.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for the practice of psychology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated procedures for granting licensure as a psychologist to an applicant licensed in another state.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for granting licensure as a psychologist to an applicant licensed in another state.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

**BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)**

201 KAR 26:190. Requirements for supervised professional experience.

RELATES TO: KRS 319.050, 319.053, 319.056, 319.064

STATUTORY AUTHORITY: KRS 319.032, 319.050(2)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (1)(l) require the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure and supervision. This administrative regulation establishes requirements for supervised professional experience.

Section 1. Supervisory Requirements for an Applicant for Licensure as a Psychologist. (1) The applicant for licensure as a psychologist with the authorization to provide psychological health care services shall have completed a minimum of 3,600 hours of supervised professional experience in accordance with this administrative regulation.

(2) A minimum of 1,800 hours of the supervised professional experience shall be a pre-doctoral internship of 1,800 hours with at least 100 hours of supervisory sessions.

(3) The remaining 1,800 hours of supervised experience shall be pre-doctoral, postdoctoral, or a combination of pre- and post-doctoral supervised professional experience acceptable to the board based upon the requirements of Sections 2 and 3 of this administrative regulation.

(4) Supervised experience shall consist of practica, field placement, or other professional experiences not including the beginning courses and accompanying practica in assessment and treatment techniques.

(5) At least fifty (50) percent of the supervised experience shall be in service-related activities, such as treatment, assessment, interviews, report-writing, case presentations, and consultations.

Section 2. For a person applying for licensure as a psychologist, the pre-doctoral internship shall meet the following criteria:

(1) The experience shall occur within an organized training program, in contrast to supervised experience or on-the-job training and have a planned, programmed sequence of training experiences;

(2) The training program shall have a clearly designated staff psychologist who shall be:

(a) Responsible for the integrity and quality of the training program;

(b) Actively licensed by the Board of Examiners in Psychology; or

(c) Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law; and

(d) For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program;

(3) Internship supervision shall be provided by a staff member of the internship agency or by an affiliate of that agency who has clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree;

(4) The internship shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The internship shall include a minimum of two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision. There shall also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, and group supervision;

(7) Training shall be post-clerkship, post-practicum, and post-externship level;

(8) The internship shall have a written statement or brochure that:

- 1. Describes the goals and content of the internship; and
- 2. States clear expectations for quality and quantity of the trainee's work; and

(b) Shall be made available to prospective interns;

(9) The internship experience shall be completed within twenty-four (24) months;

(10) The trainee shall have a title such as "intern," "resident," "fellow," or other designation of trainee status; and

(11) The internship agency, preparing institution, and intern shall have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.

Section 3. Additional Required Supervisory Experience. (1) For a person applying for licensure as a psychologist to provide psychological health care services, the 1,800 hours of supervised professional experience, in addition to the internship required by KRS 319.050(2)(d), shall be a training-oriented professional experience that:

(a) May include course-related field experience and practica; and

(b) Shall not include the beginning courses and practica in assessment and treatment techniques.

(2) In addition to training in a range of diagnostic and treatment activities conducted directly with clients seeking psychological services, the supervised professional experience shall consist of a planned and organized sequence of activities that includes explicit training and super-vision in the following areas:

- (a) Clinical skill development;
- (b) Legal and regulatory issues;
- (c) Ethical dilemmas and issues; and
- (d) Supervisory skill development.

(3) During the 1,800 hours of supervised professional experience in addition to the internship, the candidate shall:

- (a) Be under supervision as required by 201 KAR 26:171; and
- (b) Be providing psychological health care services under the supervision of a licensed psychologist or other licensed mental health professional approved by the doctoral training program who is affiliated with the training pro-gram or with the practice setting in a:

- 1. Health care facility or agency;
- 2. Regional mental health or mental retardation board;
- 3. School, college, or university;
- 4. Government agency;
- 5. Independent practice; or
- 6. Formalized postdoctoral internship program.

(4) The applicant and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (2) of this section.

(5) If the supervised professional experience in addition to the

internship is in an independent practice, a special application letter shall affirm:

- (a) The identity of the applicant, supervisor, and employer;
 - (b) That the supervising licensed psychologist is not hired, employed, or engaged under contract by the applicant and shall not be terminated by the applicant;
 - (c) That the applicant is not one (1) of the owners of the independent practice or organization, but rather serves as an employee; and
 - (d) That the applicant has both administrative and clinical supervision that shall be provided by the independent practice or employer.
- (6) If the supervised experience is in a university setting, the application shall also:
- (a) Be proffered by a full-time faculty member;
 - (b) Include a plan that contains each of the areas established in subsection (2) of this section; and
 - (c) Include a minimum of 400 hours of direct and indirect client involvement that:
 1. Is supervised by a licensed psychologist; and
 2. Includes:
 - a. Supervising student clinical work;
 - b. Diagnostic and interviewing activity that occurs within clinical research projects; or
 - c. Clinical work in the context of teaching psychotherapy, interviewing, or psychological testing.
- (7) The board shall not grant a request for temporary licensure if the request does not contain an explicit and acceptable plan for the supervised experience as required by this section.

Section 4. An applicant for licensure as a psychological associate shall complete supervised experience consisting of course-related field experience, practica, and formal internships adding up to a minimum of 600 supervised hours that shall meet the following criteria:

- (1) The experience shall occur within an organized training program and consist of a planned, programmed sequence of training experiences;
- (2) The preparing institution's psychology training program shall have a clearly-designated placement director who shall be responsible for the integrity and quality of the experiential component of the training program;
- (3) Weekly practicum and internship supervision shall be provided by a staff member of the placement agency, by an affiliate of that agency, or by a university faculty member. At least half of the supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree and license;
- (4) Field experiences, practica, and internships shall provide training in a range of diagnostic and treatment activities conducted directly with clients seeking psychological services;
- (5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;
- (6) The preparing institution shall maintain a written statement or brochure describing the goals and content of the required field experiences, practica, and internships; and
- (7) Students participating in university-sanctioned supervised experience shall be clearly identified to clients and payers[~~payers~~] as trainees.

Section 5. An applicant for licensure as a psychological practitioner shall complete the equivalent of five (5) full-time years of psychological practice under the direct supervision of a licensed psychologist approved by the board, consistent with the requirements of 201 KAR 26:171. (1) For purposes of this requirement, a candidate shall complete the equivalent of five (5) full-time years of supervised experience from the date of initial credentialing as a psychological associate, excluding any period of temporarily licensed psychological associate.~~[with]~~ A full-time year comprises[~~comprising~~] at least 1,800 hours of supervised professional experience.

(2) A school psychologist who is employed in a Kentucky school system, credentialed by the Professional Standards Board, and also credentialed as a psychological associate by this board,

may contract for on-going clinical supervision in the school setting with a board-approved licensed psychologist who is neither an employee nor a contractor of the school system.

(a) The supervised professional experience shall meet the conditions of this administrative regulation and may be used by the licensed psychological associate employed by the school system to meet the requirements for application to become a licensed psychological practitioner.

(b) To fulfill the requirements of 201 KAR 26:171, there shall be an explicit written plan approved by the board between the school system, the school psychologist, and the board-approved supervisor that delineates roles and responsibilities, without restricting the ability of the school district to direct or control the activities of its employee.

(c) A person trained in school psychology, if employed by an agency other than a public school or engaged in practice outside of the school setting, shall obtain clinical supervision in the manner specified by 201 KAR 26:171.

JEAN A. DETERS, PSY.D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 28, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 28, 2021, this hearing will be done by video teleconference. A link to the teleconference will be posted on the Board's website. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for supervised professional experience for applicants for licensure as a psychologist, psychological associate, and psychological practitioner, including the pre-doctoral internship. Further, this administrative regulation provides that an incomplete application shall be denied one year from the date of filing.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes

procedures for supervised professional experience.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies procedures for supervised professional experience.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update procedures for supervised professional experience.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for supervised professional experience.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for the practice of psychology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated procedures for supervised professional experience.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for supervised professional experience.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:200. Education requirements.

RELATES TO: KRS 319.050, 319.053, 319.064

STATUTORY AUTHORITY: KRS 319.032, 319.053 [319.050(2)(b)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1) (a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements, standards, and tests to determine the moral, intellectual, educational, scientific, technical, and professional qualifications of applicants for licensure. KRS 319.050 establishes requirements for licensed psychologists. KRS 319.064 establishes requirements for licensed psychological associates. KRS 319.053(1)(f) requires an applicant for licensure as a licensed psychological practitioner to document at least sixty (60) hours of graduate study in psychology or a related field acceptable to the board. This administrative regulation establishes education requirements for licensure by the board.

Section 1. Psychology Degree Requirements. For purposes of licensure, a degree in psychology shall:

(1) Be from a recognized institution of higher learning as established in this administrative regulation;

(2) Be clearly identified by the granting institution as a psychology program wherever the program may be administratively housed;

(3) Be specified in pertinent institutional catalogs and brochures as intended to educate and train professional psychologists;

(4) Require a dissertation for the degree as psychological in method and content and an expected product of doctoral training in

psychology;

(5) Any thesis required for the degree shall be psychological in method and content and an expected product of master's training in psychology;

(6) Stand as a recognizable, coherent, organized entity within the institution;

(7) Require within the psychology faculty clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(8) Be an integrated, organized sequence of study;

(9) Require an identifiable psychology faculty and a psychologist responsible for the program;

(10) Require an identifiable body of students who are articulated in that program for a degree; and

(11) Include educational experiences with titles, such as practicum, internship, or field training, including:

(a) For a doctoral degree, require a ~~three (3)~~ six (6) graduate semester-hour ~~practica, three (3) hours of psychotherapy/counseling/intervention and three (3) hours of assessment, excluding industrial/organizational psychology/practicum~~.

(b) For a master's degree, require a minimum of 600 supervised hours in course-related field experience, practica, and formal internship, as part of the degree program.

Section 2. Psychology Curriculum Requirements.

(1) In determining the approval of curricular experiences and course work, the board shall consider:

(a) The duration of graduate study:

1. For a doctoral degree, a minimum of three (3) years, including a minimum of one (1) full academic year in residence at the institution, consisting of a minimum of 250 contact hours or its equivalent of curricular experiences and course work delivered through face-to-face in person context with other students and with faculty of the institution, without regard to the specific physical location in which the course work is conducted; or

2. For a master's degree, a minimum of forty-five (45) semester hours.

(b) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:

1. Biological bases of behavior, including the subject matters of physiological psychology, comparative psychology, neuropsychology, sensation and perception, and psychopharmacology;

2. Cognitive-affective bases of behavior, including the subject matters of learning, thinking, motivation, and emotion;

3. Social bases of behavior, including the subject matters of social psychology group process and organizational psychology and systems; and

4. Individual differences, including the subject matters of personality theory, human development, and abnormal psychology.

(c) In addition to the core program, the curriculum shall include appropriate course work in the specialty area of training. For candidates who seek to deliver or supervise psychological health services, such training shall include specific training in diagnosis, psychological testing, assessment of individual differences, and the design and implementation of appropriate intervention techniques, such as psychotherapy, counseling, and consultation.

(2) The applicant shall provide any relevant documentation requested by the board to confirm compliance with or satisfaction of the requirements of this administrative regulation.

(3) A deficiency in course work or other requirements shall be corrected by appropriate remedial work.

Section 3. Psychology Accreditation Requirements.

(1) A regionally accredited educational institution shall be accredited by one (1) of the following, or an equivalent accreditation entity:

(a) Southern Association of Colleges and Schools;

(b) Middle States Commission on Higher Education;

(c) Middle States Association of Colleges and Schools;

(d) New England Association of Schools and Colleges;

(e) North Central Association of Colleges and Schools;

(f) Northwest Commission on Colleges and Universities;

(g) Northwest Accreditation Commission; and

(h) Western Association of Schools and Colleges.

(2) Accreditation shall include accreditation by one (1) of the associations established in subsection (1) of this section at:

(a) Level 3, master's degree granting accreditation;

(b) Level 4, doctoral degree granting accreditation; or

(c) Level 5, graduate or professional degree granting accreditation.

(3) Licensed psychological practitioner educational requirements.

(a) Graduate course work shall be related to psychological practice and may include independent study and distance learning. All graduate course work shall have been offered by a regionally accredited university meeting the standards de-scribed in Sections 5 and 6 of this administrative regulation. Continuing education credits shall not qualify to meet this requirement.

(b) The applicant shall provide any documentation required by the board in the manner and form prescribed by the board to confirm compliance with or satisfaction of the requirements of this section.

(c) At the discretion of the board, any deficiency in course work or other requirements may be corrected by appropriate remedial work.

Section 4. (1) A regionally-accredited educational institution shall be accredited by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, and Western Association of Schools and Colleges.

(2) Accreditation shall be by one (1) of the associations listed in this section at Level 3 (master's degree granting accreditation).

JEAN A. DETERS, PSY.D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 28, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 28, 2021, this hearing will be done by video teleconference. A link to the teleconference will be posted on the Board's website. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes education requirements. This administrative regulation further provides certain requirements regarding psychology degrees, psychology curriculum, licensed psychological practitioner education, and accreditation of regionally accredited educational institutions.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes education requirements.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies education requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update education requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes education requirements.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for the practice of psychology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated education requirements.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of education requirements.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:230. Examinations and applications.

RELATES TO: KRS 319.032(1)(a), 319.050, 319.053, 319.064 STATUTORY AUTHORITY: KRS 319.032(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the board to promulgate an administrative regulation establishing the examination requirements for an applicant for licensure. KRS 319.050(1) and 319.064(2)(3)(4)(c) require an applicant to successfully complete the required examination prior to licensure. This administrative regulation establishes the examination and application requirements.

Section 1. (1) The national examination shall be the Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology

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Boards (ASPPB) examination contractor and owned by the ASPPB.

- (a) The EPPP shall be taken by computer administration.
- (b) The board shall submit to the ASPPB examination contractor a list of applicants eligible to sit for the examination.

(2) The ~~[structured]~~ jurisprudence examinations shall cover Kentucky mental health law, ethical principles, and professional practice, and shall consist of an oral competency exam and a written jurisprudence exam.

Section 2. General Requirements. (1) An applicant for licensure ~~[examination]~~ shall:

(a) 1. Submit a completed application as required by 201 KAR 26:155, Section 1 or 26:280, Section 1; and

2. ~~[(b)]~~ Pay the applicable fee established in 201 KAR 26:160; or

(b) 1. The application required by subsection (1) of this section to the online application management system designated by the board shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of their knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. Payment of the application fee made payable directly to the Kentucky State Treasurer if the application is processed through the Board, or payment shall be made to the online application management system as directed by the Board.

(f) Once the Licensed Psychologist Applicant has completed all items, including sending supplemental materials, the online application management system completes a primary source verification process then forwards the application to the Board for final review.

(g) The Credentialing Committee of the Board reviews the application and determines the applicant's eligibility for licensure.

(2) The applicant shall sit for the national (EPPP) examination within one (1) year of the notice of the application being approved by the board. An applicant may sit for the national (EPPP) examination at any approved ASPPB examination contractor testing center in the United States, U.S. Territories and Canada; ~~but shall register and apply for licensure in only one (1) jurisdiction].~~

(3) If an applicant loses eligibility to sit for the national (EPPP) examination because of failure to reschedule, cancel or appear to take the examination as stated in subsection (2) of this section:

(a) The applicant shall forfeit all fees paid; and

(b) Any temporary license issued to the applicant shall be terminated.

Section 3. Examination for Licensure as a Licensed Psychologist. (1) The applicant shall pass:

(a) The national (EPPP) examination in accordance with subsection (2) of this section; and

(b) The ~~[structured]~~ examinations on competency and jurisprudence Kentucky mental health law, ~~ethical principles, and professional practice].~~

(2) The applicant shall obtain an EPPP scaled score of 500 or greater or shall have obtained a previous national EPPP passing score which satisfied the doctoral licensure requirement as to criterion level at the time of that examination. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(3) If an applicant for licensure as a licensed psychologist fails the national (EPPP) examination, the candidate shall reapply to the board, pay the appropriate fee to the ASPPB examination contractor and be deemed eligible by the board to be permitted to sit again for the national (EPPP) examination.

(a) The candidate shall continue to function under the supervision of the board-approved supervisor until:

1. The national (EPPP) examination and ~~[structured]~~ jurisprudence examinations on Kentucky mental health law, ethical

principles, and professional practice are successfully completed; or
2. The temporary license is terminated.

(b) The applicant for licensure as a licensed psychologist shall not be scheduled for the jurisprudence examination ~~[on Kentucky mental health law] nor the oral competency examination~~ until the national (EPPP) examination has been successfully passed and the board has determined that the requirements for supervised experience for licensure as a licensed psychologist have been met.

~~(4) [In addition to] The jurisprudence examination shall require that the applicant [demonstrating] demonstrate an acceptable level of knowledge of Kentucky mental health law, [an applicant for licensure as a licensed psychologist shall submit to a structured oral examination administered by two (2) licensed psychologists approved by the board. The structured oral examination shall not be required for an applicant who holds a Certificate of Professional Qualification in Psychology (CPQ) issued by the ASPPB or a successor organization or is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization or holds a current license in good standing from a jurisdiction with a reciprocity agreement with this board.]~~

~~(a) [This structured oral] The competency examination shall be administered by two (2) licensed psychologists approved by the board and shall cover ethical principles and professional practice. [The applicant shall demonstrate an acceptable level of knowledge in each of the areas in order to pass the examination.]~~

(b) Each examiner shall independently rate the applicant's performance.

(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the ~~[structured oral]~~ competency examination.

(5) If the applicant fails the first ~~[structured oral]~~ jurisprudence examination, the applicant may reapply with a detailed remediation plan, including but not limited to the process by which the applicant proposes to improve his or her performance on the examination, the time proposed to be spent on remediation, and with whom the applicant proposes to study or obtain further instruction.

~~(a) Upon completion of the remediation plan approved by the board, the applicant shall be administered a [structured oral] second examination, [by a second team composed in the same manner as the first team.]~~

~~(b) If the second structured [oral] examination is not passed, [failed], the applicant may reapply with a further remediation plan approved by the board.~~

~~(c) Upon completion of the approved second remediation plan, the applicant shall be administered a [structured oral] third examination, [by a team of the licensed psychologist members of the board and appointed examiners as needed.]~~

~~(d) A majority of the examining team shall rate the applicant as having passed or failed the structured oral examination on ethical principles and professional practice.]~~

(6) An applicant may only take the structured examination on three occasions. If [the] an applicant for licensure as a licensed psychologist [fails to] does not pass on the third attempt [the structured oral examination, and wishes to] they may apply to be credentialed as a licensed psychological associate, by completing an [a completed] application and paying the appropriate fee, as required by 201 KAR 26:160, [shall be submitted.] The board shall accept the applicant's previous examination results to satisfy the requirements for the licensed psychological associate application. [as to criteria level.]

Section 4. Examination for Licensure as a Licensed Psychological Practitioner. (1) The applicant shall pass:

(a) A national (EPPP) examination unless the applicant's previous examination results for the national (EPPP) examination satisfied the doctoral licensure requirement as to criterion level at the time of that examination; or

(b) The applicant shall obtain a computerized national (EPPP) scaled score of 500 or greater. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(2) Pursuant to KRS 319.050(3), an applicant for licensure as a licensed psychological practitioner who has been approved to sit

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for the national (EPPP) examination shall continue to be supervised until all requirements for licensure as a licensed psychological practitioner have been completed.

(3) If an applicant for licensure as a licensed psychological practitioner fails to obtain a scaled score of 500 or greater on the EPPP examination, the candidate may reapply to the board, pay the appropriate fee to the ASPPB examination contractor and be permitted to sit for the national (EPPP) examination again.

(4) The applicant for licensure as a licensed psychological practitioner shall not be scheduled for ~~[the examination on] Kentucky examinations [mental health law, The applicant shall demonstrate an acceptable level of knowledge in each of the areas in order to pass the examination]~~ until the national (EPPP) examination has been successfully passed and the required five (5) years of supervised experience or its equivalent have been approved by the board.

(5) ~~An applicant for licensure as a licensed psychological practitioner shall submit to a competency examination administered by an at least one (1) licensed psychologist and either a certified psychologist with autonomous functioning or a licensed psychological practitioner. The applicant for licensure as a licensed psychological practitioner shall also complete a jurisprudence examination. [In addition to demonstrating an acceptable level of knowledge of Kentucky mental health law, an applicant for licensure as a licensed psychological practitioner shall submit to a structured oral examination administered by an examination team consisting of at least one (1) licensed psychologist and either a certified psychologist with autonomous functioning or a licensed psychological practitioner.]~~

(a) ~~[This structured oral] The competency examination shall cover ethical principles and professional practice. [The applicant shall demonstrate an acceptable level of knowledge in each of the areas in order to pass the examination.]~~

(b) Each examiner shall independently rate the applicant's performance, using the same criteria as the ~~[structured oral] competency examination for licensed psychologist candidates.~~

(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the ~~[structured oral] competency examination.~~

(6) If the applicant ~~[fails] does not pass~~ the ~~[first structured oral] competency examination, the applicant may reapply with a detailed remediation plan, including but not limited to the process by which the applicant proposes to improve his or her performance on the examination, the time proposed to be spent on remediation, and how the applicant proposes to study or obtain further instruction. Once the remediation plan is completed, the second competency examination [and] shall be administered, [a structured oral examination by a second team composed in the same manner as the first team.]~~

(7) If the applicant ~~[fails] does not pass~~ the second ~~[oral] examination, the applicant may reapply with another detailed remediation plan, and shall be administered a [structured oral] third examination. [by a team of the licensed members of the board and appointed examiners as needed. A majority of the examining team shall rate the applicant as having passed the examination.]~~

(8) ~~An applicant may only take the examination three (3) times, and would have to remain as a Psychological Associate under Board approved supervision if the examination is failed three (3) times.~~

Section 5. Examination for Licensure as a Psychological Associate. (1) The applicant shall:

- (a) Obtain a national (EPPP) scaled score of 400 or greater; or
- (b) Have obtained an EPPP passing score for licensure at the master's level in effect at the time of the applicant's previous national (EPPP) examination.

(c) The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(2) Pursuant to KRS 319.064(3), an applicant for licensure as a licensed psychological associate who has been approved to sit for the national (EPPP) examination and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary license.

(3) If an applicant for licensure as a psychological associate fails the national (EPPP) examination, the applicant shall:

- (a) File a detailed remediation plan, cosigned by the supervisor within thirty (30) days of notice of failure; and
- (b) Be eligible to retake the national (EPPP) examination upon approval of the plan by the board.

Section 6. The following is incorporated by reference in this regulation:

(a) Application for Licensure as a Psychologist as required by 201 KAR 26:155, Section 1 or 26:280, Section 1, March 2021.

JEAN A. DETERS, PSY.D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Alternately, the public hearing may be conducted by way of Zoom if the Mayo-Underwood Building is still closed due to the pandemic. A Zoom link will be posted on the Board website if necessary. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes examination and application procedures.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes examination and application procedures.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies examination and application procedures. This amendment provides a new application option of using the Psychology Licensure Universal System (PLUS) program and paying the fee established in 201 KAR 26:160. The amendment clarifies that examinations administered by the Board are administered by two licensed psychologists. The amendment

also clarifies that the applicant’s detailed remediation plan in the event of reexamination shall include the process by which the applicant proposes to improve his or her performance on the examination, the time proposed to be spent on remediation, and with whom the applicant proposes to study or obtain further instruction. Further, the amendment clarifies that an applicant may only take the structured examination for licensure as a licensed psychologist a maximum of three occasions, and may only take the structured examination for licensure as a licensed psychological practitioner a maximum of three occasions.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update examination and application procedures.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes examination and application procedures.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for the practice of psychology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated examination and application procedures.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of examination and application procedures.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:250. Employment of a psychological associate, a temporarily licensed psychological associate, or a temporarily licensed psychologist.

RELATES TO: KRS 319.032(1)(b), 319.032(1)(l), 319.064(5)

STATUTORY AUTHORITY: KRS 319.032(1)(b), 319.032(1)(l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

319.032(1)(l) requires the Board of Examiners of Psychology to promulgate an administrative regulation governing the supervision and employment of a licensed psychological associate, temporarily licensed psychological associate, or a temporarily licensed psychologist. KRS 319.064(5) prohibits a licensed psychological associate or a temporarily licensed psychological associate or a temporarily licensed psychologist from practicing independently, except under the employment and supervision of a board approved licensed psychologist. This administrative regulation establishes the requirements for the employment of a licensed psychological associate or a temporarily licensed psychological associate or a temporarily licensed psychologist.

Section 1. Employment of a licensed psychological associate, a temporarily licensed psychological associate, or a temporarily licensed psychologist (which are licensees requiring supervision) by a regional mental health/mental retardation board, college or university, or government agency shall not be considered independent practice.

Section 2. (1) A licensed psychological associate or a temporarily licensed psychological associate, or a temporarily licensed psychologist may be employed in a supervisor’s independent practice, if the supervisor is responsible for the direction and control of the practice of the licensed psychological associate or a temporarily licensed psychological associate or a temporarily licensed psychologist.

(2) Any such employees shall be paid compensation. Such

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employees may not be independent contractors and receive a Form 1099 for their compensation. Any independent contractor must have an independent license.

Section 3. (1) A special application shall:

(a) Be submitted to the board by the supervisor of record and a licensed psychological associate or a temporarily licensed psychological associate or a temporarily licensed psychologist if:

1. a. The licensed psychological associate or a temporarily licensed psychological associate or a temporarily licensed psychologist is employed in an independent practice; and

b. The supervisor of record is not the employer; or

2. The employer is not an organization listed in Section 1 of this administrative regulation.

(b) Be approved by the board before the practice begins.

(c) Identify the licensed psychological associate or temporarily licensed psychological associate, or temporarily licensed psychologist supervisor, and employer.

(d) Certify that:

1. The supervising licensed psychologist is not hired, employed, or engaged under contract by the licensed psychological associate or temporarily licensed psychological associate or temporarily licensed psychologist;

2. The licensed psychological associate or temporarily licensed psychological associate or temporarily licensed psychologist is not one of the owners of the independent practice or organization, but rather serves as an employee; and

3. The licensed psychological associate or temporarily licensed psychological associate or temporarily licensed psychologist has both administrative and clinical supervision which are provided by the independent practice or organization.

(2) The arrangement described in the application shall be approved by the board before the practice begins.

Section 4. A licensed psychological associate or a temporarily licensed psychological associate or temporarily licensed psychologist shall not pay, hire, or employ a supervisor to provide supervision in accordance with 201 KAR 26:171.

Section 5. A licensed psychological associate or a temporarily licensed psychological associate or temporarily licensed psychologist who works as an employee for more than one (1) independent practice or organization shall obtain approval from the board for a supervisor of record for each independent practice or organization and shall comply with 201 KAR 26:171 for approval to have more than two (2) supervisors of record.

Section 6. In all communications and advertising with the public, the licensed psychological associate's or temporarily licensed psychological associate's or temporarily licensed psychologist's relationship with the employer and the supervisor shall be clearly indicated.

Section 7. The licensed psychological associate or temporarily licensed psychological associate, or temporarily licensed psychologist and the supervisor shall comply with the requirements for supervision established in 201 KAR 26:171.

Section 8. Incorporation by Reference. (1) "Special Application", (~~October 2016~~ March 2021 edition), is incorporated by reference. [

(2)] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street~~(911 Leawood Drive)~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be found on the Board's Web site, www.psy.ky.gov.

JEAN A. DETERS, PSY.D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,

be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 28, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 28, 2021, this hearing will be done by video teleconference. A link to the teleconference will be posted on the Board's website. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes licensees requiring supervision, including licensed psychological associates, temporarily licensed psychological associates, or temporarily licensed psychologists ("supervisees" in this description). This administrative regulation further provides certain requirements and provisions regarding: employment by certain boards, colleges, universities, or government agencies shall not be considered independent practice; employment in a supervisor's independent practice if the supervisor is responsible for direction and control of the supervisees; payment of compensation to supervisees, and supervisee's shall not be independent contractors, and independent contractors shall have an independent license; submission of a special application by the supervisor and supervisee in certain conditions and approval by the Board before the practice begins; the supervisee shall not pay, hire, or employ a supervisor to provide supervision; approval by the Board to have more than two supervisors of record; a requirement that the supervisee's relationship with the employer be clearly indicated in all communications and advertising with the public; the supervisee shall comply with the requirements for supervision established in 201 KAR 26:171; and the incorporation by reference of the "Special Application" form.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes licensees requiring supervision.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies licensees requiring supervision.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update licensees requiring supervision.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes licensees requiring supervision.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for the practice of psychology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated licensees requiring supervision.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of licensees requiring supervision.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS Board of Examiners of Psychology (Amendment)

201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.

RELATES TO: KRS 319.064

STATUTORY AUTHORITY: KRS 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the Board of Examiners of Psychology to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological associate. This administrative regulation establishes the requirements for applicants for licensure and the conditions for a temporary license.

Section 1. Application.

(1) An application for a credential to perform certain functions as a licensed psychological associate may be submitted after the requirements established in KRS 319.064(2) are met to the Board or to an online application management system contracted by the Board for the purposes of application screening, as the Board directs.

(2) The application required by subsection (1) of this section shall made to the Board or to the online application management system shall:[shall be made by submitting a completed Application for Licensure as a Psychological Associate to the board. The application shall:]

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of [his or her] their knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. Payment of the application fee made payable directly to the Kentucky State Treasurer if the application is processed through the Board, or payment shall be made to the online application management system as directed by the Board.

~~1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;]~~

2. Three (3) letters of reference or completed Recommendation Form for Licensure as a Psychological Associate from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in

psychology (Ph.D. Psy.D., or Ed.D.); and

3. An official transcript for all levels of education required for licensure. Transcripts must be received in sealed envelopes or electronically directly from the school or a third-party clearinghouse.

(3) Incomplete Application. An incomplete application shall be determined to be expired one (1) year from the date of filing, and may be destroyed.

Section 2. Temporary Licensure.

(1) An applicant may request permission to perform functions as a licensed psychological associate on a temporary basis pursuant to KRS 319.064(3).

(2) The request for a temporary credential shall be co-signed by the candidate and the pro-posed supervisor, who shall be a licensed psychologist approved by the board and who holds the health services provider designation.

(3)(a) A temporary license shall be valid for one (1) year from the date of the notice of approval by the board.

(b) During the period of temporary licensure, a candidate shall:

1. Successfully complete all credentials and examination procedures; and

2. Pass the Examination for Professional Practice in Psychology (EPPP).

(4)(a) Under exceptional circumstances and upon written request cosigned by the board approved supervisor, the board may approve an extension of the period of temporary licensure.

(b) A licensee shall submit a completed Request for Extension of Temporary Licensure as a Psychological Associate to the board to request an extension.

(c) If a temporary license requires an extension after one year, the licensee may request a six month extension.

(d) After the six months, a second extension may be requested for an additional six months.

(e) After a total of two (2) years for extensions, the licensee may request a second temporary license following the aforementioned steps.

(f) If after two years on the second temporary license another extension is requested, the licensee may request a third temporary license following the aforementioned steps.

(g) Licensees shall not exceed a total of six years of extensions for all temporary licenses nor hold a temporary license longer than six years.

(h) All extensions are provided by the board at the board's discretion.

Section 3. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which a candidate who has completed his or her degree requirements may begin employment by an agency to practice psychology under supervision with a board-approved supervisor.

(1) Upon acceptance of employment, the candidate and the licensed psychologist with health service practitioner designation who shall serve as the clinical supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice may be grounds for disciplinary action against the candidate and the clinical supervisor.

(2) It shall be the responsibility of the candidate to ensure that all materials are forwarded to the board within thirty (30) days from the date of agency employment. Once the application is complete, the board shall review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if [his or her] their application material is insufficient to take any action, [he or she] they shall be directed to cease practice until the requirements are met.

(3) The grace period shall not be extended beyond sixty (60) days. A candidate who fails to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in subsection (1) of this

section, the candidate shall be practicing psychology under the jurisdiction of the board, and shall be subject to KRS Chapter 319 and 201 KAR Chapter 26.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Licensure as a Psychological Associate", ~~[February 2017]~~ March 2021;

(b) "Recommendation Form for Licensure as a Psychological Associate", ~~February 2017]~~ March 2021; and

(c) "Request for Extension of Temporary Licensure as a Psychological Associate", ~~[February 2017.]~~ March 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street [911 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JEAN A. DETERS, PSY. D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 28, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 28, 2021, this hearing will be done by video teleconference. A link to the teleconference will be posted on the Board's website. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the procedures for applications for licensed psychological associates.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for applications for licensure of licensed psychological associates.

(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 319 by

carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies the procedures for applications for licensure of licensed psychological associates.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify procedures for applications for licensed psychological associates.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for applications for licensed psychological associates.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish the procedures for applications for licensed psychological associates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated procedures for applications for licensed psychological associates.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of the procedures for applications for licensed psychological associates.

(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 Examiners of Psychology 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? This administrative

regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS Board of Examiners of Psychology (Amendment)

201 KAR 26:290. Licensed psychological practitioner: application procedures.

RELATES TO: KRS 319.053

STATUTORY AUTHORITY: 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the Board of Examiners of Psychology to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological practitioner. This administrative regulation establishes the requirements for these applicants.

Section 1. Application. (1) An applicant for licensure as a licensed psychological practitioner shall submit a completed Application for Licensure as a Psychological Practitioner after the requirements established in KRS 319.053(1) are met to the Board or to an online application management system contracted by the Board for the purposes of application screening, as the Board directs.

(2) The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of [his or her] their knowledge and belief;

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. ~~[A payment to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160.]~~ Payment of the application fee made payable to the Kentucky State Treasurer if the application is processed through the Board or payment shall be made to the online application management system as directed by the Board.

2. ~~Three (3) letters of completed Recommendation for Licensure as a Psychological Practitioner from persons who are familiar with the clinical work of the applicant. One (1) letter shall~~

~~be from the current board-approved supervisor of record outlining the candidate's scope of practice and the other two (2) letters shall be from licensed mental health professionals acceptable to the board;—Two (2) letters of completed Recommendation for Licensure as a Psychological Practitioner forms from licensed mental health professionals acceptable to the board who are familiar with the clinical work of the applicant.[outlining the candidate's scope of practice and the other two (2) letters shall be from licensed mental health professionals acceptable to the board; and]~~

3. An official transcript for all levels of education required for licensure. Transcripts must be received in sealed envelopes or electronically directly from the school or a third-party clearinghouse; and

4. One (1) completed Supervisor Recommendation for Licensure as a Psychological Practitioner shall be from the current board-approved clinical supervisor of record.

(c) An incomplete application may be determined to be expired one (1) year from the date of filing, and may be destroyed.]

~~4. A completed Supervisor Recommendation for Licensure as a Psychological Practitioner.]~~

Section 2. Temporary Licensure. Temporary credentials shall not be issued to persons applying for licensed psychological practitioner status. An applicant may continue to practice under board-approved supervision as a licensed psychological associate or as a certified psychologist pending successful completion of all requirements for a change of status to a licensed psychological practitioner.

(1) The candidate shall obtain an acceptable score on the national (EPPP) examination as established in 201 KAR 26:230, Section 4.

(2) The board shall accept the applicant's previous examination results for the national (EPPP) examination if the original test score satisfied the doctoral licensure requirement as to criterion level at the time of that examination.

(3) The applicant shall pass the [structured] competency and jurisprudence examinations on Kentucky mental health law, ethical principles, and professional practice established in 201 KAR 26:230, Section 4(5). An applicant shall score at least an eighty (80) percent to pass the [structured] jurisprudence examination of Kentucky mental health law. An applicant shall score a 100 percent to pass the [oral] competency examination on ethical principles and professional practice.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Psychological Practitioner", [February 2017] March 2021;

(b) "Supervisor Recommendation for Licensure as a Psychological Practitioner", [February 2017] March 2021; and

(c) "Recommendation for Licensure as a Psychological Practitioner", [February 2017] March 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street, [911 Leawood Drive] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. These materials may also be viewed on the Board's Web site.

JEAN A. DETERS, PSY.D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 28, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 28, 2021, this hearing will be done by video teleconference. A link to the teleconference will be posted on the Board's website. Individuals interested in attending this hearing shall notify this

agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the procedures for applications for licensed psychological practitioners.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for applications for licensure of licensed psychological practitioners.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies the procedures for applications for licensure of licensed psychological practitioners.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify procedures for applications for licensed psychological practitioners.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for applications for licensed psychological practitioners.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish the procedures for applications for licensed psychological practitioners.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated procedures for applications for licensed psychological practitioners.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of the procedures for applications for licensed psychological practitioners.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:310. Telehealth and telepsychology.

RELATES TO: KRS 319.140[, 29 U.S.C. 794(d)]
STATUTORY AUTHORITY: KRS 319.032(2); KRS 319.140(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.140

requires a treating psychologist utilizing telehealth to ensure a [patient's] recipient's informed consent and to maintain confidentiality. This administrative regulation protects the health and safety of the citizens of Kentucky and establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the provision of psychological services and in the provision of continuing education.

Section 1. Definitions. (1) "Client" is defined by 201 KAR 26:145, Section 3[2];

(2) "Telehealth" means[is defined by KRS 319.140(3)]:

(a) Delivery of health care-related services by a provider who is a health care provider licensed in Kentucky to a recipient through a face-to-face encounter with access to real-time interactive audio and video technology;

(b) Shall not include the delivery of services through electronic mail, text chat, facsimile, or standard audio-only telephone call; and

(c) Shall be delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9;

(3) "Telepsychology" means "practice of psychology" as defined by KRS 319.010(7) between the psychologist and the recipient [patient]:

(a) Provided using an electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

(4) "Telehealth service" means any service that is provided via telehealth and is one (1) of the following:

(a) Event;

(b) Encounter;

(c) Consultation;

(d) Visit;

(e) Remote patient monitoring;

(f) Referral; or

(g) Treatment.

Section 2. Client Requirements. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall, upon initial contact with the client:

(1) Make reasonable attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically;

(3) Provide to the client alternative means of contacting the credential holder other than electronically;

(4) Document if the client has the necessary knowledge and skills to benefit from the type of telepsychology provided by the credential holder;

(5) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications;

(6) Inform the client in writing about:

(a) The limitations of using technology in the provision of telepsychology;

(b) Potential risks to confidentiality of information due to technology in the provision of telepsychology;

(c) Potential risks of disruption in the use of telepsychology;

(d) When and how the credential holder will respond to routine electronic messages;

(e) In what circumstances the credential holder will use alternative communications for emergency purposes;

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- (f) Who else may have access to client communications with the credential holder;
- (g) How communications can be directed to a specific credential holder;
- (h) How the credential holder stores electronic communications from the client; and
- (i) The reporting of clients required by 201 KAR 26:145, Section 7.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall:

- (1) Limit the practice of telepsychology to the area of competence in which proficiency has been gained through education, training, and experience;
- (2) Maintain current competency in the practice of telepsychology through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;
- (3) Document the client's presenting problem, purpose, or diagnosis;
- (4) Follow the record-keeping requirements of 201 KAR 26:145, Section 6; and
- (5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data.
- (6) Document the client's written informed consent to the services being provided and the provision of those services via telehealth, including that the patient has the right to refuse telehealth consultation or services, has been informed of alternatives to telehealth services, that the client shall be entitled to receive information from the provider regarding the services rendered, that the client's information shall be protected by applicable federal and state law regarding patient confidentiality, that the client shall have the right to know the identity of all persons present at any site involved in the telehealth services, and to exclude any such person(s), and the client shall have the right to be advised, and to object to, any recording of the telehealth consultation or services.
- (7) The requirement of a written informed consent shall not apply to an emergency situation if the client is unable to provide informed consent and the client's legally authorized representative is not available.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall comply with:

- (1) State law where the credential holder is credentialed and state law regarding the practice of psychology~~[be licensed to practice psychology]~~ where the client is ~~[domiciled]~~ located at the time services are rendered; and
- (2) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities;

Section 5. Representation of Services and Code of Conduct. A credential holder using telehealth to deliver psychological services or who practices telepsychology:

- (1) Shall not by or on behalf of the credential holder engage in false, misleading, or deceptive advertising of telepsychology;
- (2) Shall comply with 201 KAR 26:145.

JEAN A. DETERS, PSY.D., Board Chair
 APPROVED BY AGENCY: March 1, 2021
 FILED WITH LRC: March 4, 2021 at 2:15 p.m.
 PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Alternately, the public hearing may be conducted by way of Zoom if the Mayo-Underwood Building is still closed due to the pandemic. A Zoom link will be posted on the Board website if necessary.

Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for telehealth.
 - (b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for telehealth.
 - (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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The Amendment clarifies procedures for telehealth. The amendment also: defines "telehealth", and "telehealth service"; requires a provider to document the telehealth service within 48 hours of the service and follow all documentation requirements of the practice; requires documentation of the patient's written informed consent to the services and the provision of those services via telehealth, the right to refuse telehealth consultation or services, alternatives to telehealth services, the right to receive information from the provider regarding services rendered, that the patient's information shall be protected by applicable laws regarding patient confidentiality, the right to know the identity of all persons present at any site involved in the telehealth services and to exclude any such person, and the right to be advised of and object to any recording of the telehealth consultation or services; provides an exception to written informed consent in an emergency situation if the patient is unable to provide informed consent and the patient's legally authorized representative is not available; and requires compliance with state law regarding the practice of psychology where the client is domiciled or located at the time services are rendered.
 - (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update procedures for telehealth.
 - (c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes

procedures for telehealth.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for the practice of psychology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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 provide updated procedures for telehealth.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for telehealth.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Amendment)

201 KAR 35:010. Definitions for 201 KAR Chapter 35.

RELATES TO: KRS 309.080, 309.0805, 309.081, 309.0813, 309.084, 309.085, 309.086, 309.087, 309.089

STATUTORY AUTHORITY: KRS 309.0813(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813 requires the Kentucky Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing requirements for alcohol and drug counselors and peer support specialists. This administrative regulation establishes definitions of terms used by the board in administrative regulations pertaining to the credentialing of alcohol and drug counselors and peer support specialists.

Section 1. (1) "Academic course" means a course that is offered by a postsecondary institution accredited by a recognized accreditation agency and that is:

(a) An alcohol and drug counseling course, designated by title or content; or

(b) An academic course, relevant to alcohol and drug counseling.

(2) "Applicant" means an individual who has applied for temporary registration, registration, temporary certification, certification, or licensure in accordance with KRS 309.084 or a credential holder renewing a[his] credential[application] in accordance with KRS 309.085.

(3) "Approved" means recognized by the Kentucky Board of Alcohol and Drug Counselors.

(4) "Board" is defined by KRS 309.080(1).

(5) "Certified alcohol and drug counselor associate I" is defined by KRS 309.080(2).

(6) "Certified alcohol and drug counselor associate II" is defined by KRS 309.080(3).

(7) "Certified alcohol and drug counselor" is defined by KRS 309.080(4).

(8) "Chair" means the chairperson or vice-chairperson of the board.

(9)[(7)] "Charge" means a specific allegation contained in a formal complaint, as established in subsection (14)[(12)] of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 309, the administrative regulations promulgated thereunder, or another state or federal statute or regulation.

(10)[(8)] "Classroom hour" means an academic hour from an accredited institution or continuing education hour.

(11)[(9)] "Client" means an individual, family, or group who directly receives services from an alcohol and drug counselor or peer support specialist; a corporate entity or other organization if the contract is to provide an alcohol and drug counselor or peer support specialist service of benefit directly to the corporate entity or organization; or a legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult.

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~~(12)~~~~(40)~~ “Clinical supervision” means a disciplined, tutorial process wherein principles are transformed into practical skills, with four (4) overlapping foci: administrative, evaluative, clinical, and supportive.

~~(13)~~~~(41)~~ “Clinical supervisor” means a certified alcohol and drug counselor who has at least two (2) years of post-certification~~post-credential~~ experience and has attended the board-sponsored supervision training who provides supervision and whose credential is currently in good standing with the board, or a licensed clinical alcohol and drug counselor who has at least twelve (12) months of post-licensure experience or has attended the board-sponsored supervision training who provides supervision and whose credential is currently in good standing with the board.

~~(14)~~~~(42)~~ “Complaint” means a written allegation of misconduct by a credentialed individual or another person, alleging a violation of:

(a) KRS Chapter 309;

(b) Administrative regulations promulgated in accordance with KRS Chapter 309;

(c) Another state or federal statute or regulation; or

(d) A combination of paragraphs (a), (b), or (c) of this subsection.

~~(15)~~~~(43)~~ “Complaint screening committee” means a committee that reviews complaints, investigates reports, participates in informal proceedings to resolve a formal complaint, and consists of up:

~~(a)~~ ~~Up~~ to three (3)~~two (2)~~ board members appointed by the chair~~;~~ and

~~(b)~~ ~~If appointed, the executive director of the Division of Occupations and Professions, or another staff person, to be a non-voting member who is available to the committee for assistance.~~

~~(16)~~~~(44)~~ “Continuing education hour” means fifty (50) clock minutes of participating in a continuing education experience.

~~(17)~~~~(45)~~ “Credential holder” means a person who has a credential issued by the board pursuant to KRS 309.080 to 309.089~~is defined by KRS 309.080(3)~~.

~~(18)~~~~(46)~~ “Disciplinary action” means to:

(a) Revoke, suspend, place on probation, or restrict the credential holder; and

(b) Publicly reprimand, publicly admonish, or fine.

~~(19)~~~~(47)~~ “Education~~[Educational]~~ program” means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or in a series.

~~(20)~~~~(48)~~ “Informal proceedings” means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a resolution~~[dispensation]~~ of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

~~(21)~~~~(49)~~ “Investigator” means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by ~~the Attorney General or~~ the board.

~~(22)~~~~(20)~~ “Licensed clinical alcohol and drug counselor” is defined by KRS 309.080~~(6)~~~~(4)~~.

~~(23)~~~~(24)~~ “Licensed clinical alcohol and drug counselor associate” is defined by KRS 309.080~~(7)~~~~(5)~~.

~~(24)~~~~(22)~~ “Licensee” is defined by KRS 309.080~~(8)~~~~(6)~~.

~~(25)~~~~(23)~~ “Provider” means an organization approved by the Kentucky Board of Alcohol and Drug Counselors for providing continuing education programs.

~~(26)~~~~(24)~~ “Registered alcohol and drug peer support specialist” is defined by KRS 309.080~~(10)~~~~(8)~~.

~~(27)~~~~(25)~~ “Registrant” is defined by KRS 309.080~~(11)~~~~(9)~~.

~~(28)~~~~(26)~~ “Relevant” means having content applicable to the practice of alcohol and drug counseling in accordance with the requirements of 201 KAR 35:040, Section 3(2).

~~(29)~~~~(27)~~ “Work experience” means the hours spent performing the services, tasks, and reports necessary for providing counseling, intervention, or support services to a person with a substance use disorder or that person's significant others.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 24, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 24, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 24, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/88015845024?pwd=WnhsNmR3SGJwRXM0YktrM1psbkVxZz09>, Password: 203666, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 201 KAR Chapter 35.

(b) The necessity of this administrative regulation: This regulation is necessary to define the terms used in 201 KAR Chapter 35.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute, KRS 209.0813(1), requires the board to promulgate regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a definition for terms used in 201 KAR Chapter 35.

(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 change the existing administrative regulation by: (1) adding temporary registration and temporary certification to the definition of “applicant”; (2) making pronouns gender neutral; (3) clarifying that a credential holder renews a credential not an application; (4) adding definitions for certified alcohol and drug counselor associate I and II; (5) updating statutory location for certified alcohol and drug counselor; (6) changing definition for “clinical supervisor” to reflect changes in statutory requirements, specifically, defining a clinical supervisor as a certified alcohol and drug counselor who has two (2) years of post-certification experience and has attended the board-sponsored training or a licensed clinical alcohol and drug counselor who has at least twelve (12) months of post-licensure experience or has attended the board-sponsored supervision training; (7) deleting reference to the executive director of the Division of Occupations and Professions as a non-voting member of the complaint screening committee; (8) updating definition of credential holder to mean a person who has a credential issued by the board pursuant to KRS 309.080 to 309.089; (9) removing the Attorney

General” from the definition of “investigator.”

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to have clear definitions for terms used in the board’s regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute. The authorizing statute, KRS 209.0813(1), requires the board to promulgate regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing clear definitions for terms used in the board’s regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: There are no actions needed to be taken for compliance of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Applicants and credential holders benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operations are funded by fees paid by credential holders and applicants.

(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 to implement the changes made by this 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 or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as this regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Board of Alcohol and Drug Counselors.

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

regulation. KRS 309.0813(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. 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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Amendment)

201 KAR 35:020. Fees.

RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833, 309.084, 309.0841, 309.0842, 309.085(1)(a)

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5), (12), 309.085(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written examination, which applicants shall be required to successfully complete. KRS 309.0813(12) requires the board to promulgate administrative regulations establishing initial registration, certification, and licensure fees and renewal fees. This administrative regulation establishes those fees.

Section 1. Application Fees. (1) The application fee for board review of an application for a licensed clinical alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, certified alcohol and drug counselor, certified alcohol and drug counselor associate II, certified alcohol and drug counselor associate I, or registered alcohol and drug peer support specialist, KBADC Form 1, shall be fifty (50) dollars.

(2) The application fee shall be nonrefundable.

(3) An application shall lapse one (1) year from the date it is filed with the board office.

(4)[(a)] If an approved applicant applies one (1) or more times after the original application lapses, the applicant shall comply with the requirements of this subsection.

[a][4-] The applicant shall successfully complete the examination required by the board within one (1) year[two (2) years] from the date the original application is filed.

[b][2-] If the applicant does not successfully complete the examination within the time period required by subparagraph [a][4-] of this paragraph, the applicant shall update and refile the application prior to sitting for the examination again.[

(b) The fee for refiling the application form shall be twenty (20) dollars.-]

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Section 2. Comprehensive Examination Fees. (1) An applicant for registration as an alcohol and drug peer support specialist shall pay an examination fee of \$150. The fee for retaking the comprehensive examination for registration shall be \$150.

(2) An applicant for certification shall pay an examination fee of \$200. The fee for retaking the comprehensive examination for certification shall be \$200.

(3) An applicant for licensure shall pay an examination fee of \$200. The fee for retaking the comprehensive examination for licensure shall be \$200.

Section 3. Credentialing Fees. (1)(a) The registration fee for an alcohol and drug peer support specialist shall be \$100.

(2)(b) The certification fee for a certified alcohol and drug counselor shall be \$200.

(3)(e) The licensure fee for a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be \$300.

(2) If the applicant successfully completes all requirements for registration, certification, or licensure, the fee established in subsection (1) of this section shall cover credentialing for the initial three (3) year period.

Section 4. Renewal Fees and Penalties. (1)(a) A registration, certificate, or license not renewed within ninety (90) days after the holder's renewal date shall be deemed cancelled in accordance with KRS 309.085(2).

(b) A person holding a cancelled registration shall not use the title "registered alcohol and drug peer support specialist" or hold himself or herself out as a registered alcohol and drug peer support specialist or engage in the practice of alcohol and drug peer support services.

(c) A person holding a canceled certificate shall not:

1. Use the title "certified alcohol and drug counselor," or hold himself or herself out as a certified alcohol and drug counselor, or engage in the practice of alcohol and drug counseling.

2. Use the title temporary certified alcohol and drug counselor, hold himself or herself out as a temporary alcohol and drug counselor, or engage in the practice of alcohol and drug counseling.

3. Use the title "certified alcohol and drug counselor associate I," or hold himself or herself out as a certified alcohol and drug counselor associate I, or engage in the practice of alcohol and drug counseling.

4. Use the title "certified alcohol and drug counselor associate II," or hold himself or herself out as a certified alcohol and drug counselor associate II, or engage in the practice of alcohol and drug counseling.

(d) A person holding a canceled license shall not use the title "licensed clinical alcohol and drug counselor" or hold himself or herself out as a licensed clinical alcohol and drug counselor or engage in the practice of alcohol and drug counseling.

(e) A person holding a canceled license as a licensed clinical alcohol and drug counselor associate shall not use the title "licensed clinical alcohol and drug counselor associate" or hold himself or herself out as a licensed clinical alcohol and drug counselor associate or engage in the practice of alcohol and drug counseling.

(2) The fees and penalties established in this subsection shall be paid in connection with registration, certification, or licensure renewals.

(a) The renewal fee for registration as a temporary registered alcohol and drug peer support specialist shall be fifty (50) dollars for a two (2) year period, and shall accompany the Application for Renewal, KBADC Form 16.

(b) The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$100 for registration as a temporary registered alcohol and drug peer support specialist for a two (2) year period.

(c)(a) The renewal fee for registration as a registered alcohol and drug peer support specialist shall be \$100 for a three (3) year period, and shall accompany the Application for Renewal, KBADC

Form 16.

(d)(b) The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$150 for registration as a registered alcohol and drug peer support specialist for a three (3) year period.

(e)(e) The renewal fee for certification as a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, or a temporary certified alcohol and drug counselor shall be \$100 for a two (2) year period, and shall accompany the Application for Renewal.

(f) The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$150 for certification as a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, or a temporary certified alcohol and drug counselor for a two (2) year period.

(g) The renewal fee for certification as a certified alcohol and drug counselor shall be \$200 for a three (3) year period, and shall accompany the Form 16 Application for Renewal.

(h)(d) The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$250 for certification as a certified alcohol and drug counselor for a three (3) year period.

(i)(e) The renewal fee for licensure shall be \$300 for a three (3) year period, and shall accompany the Application for Renewal.

(j)(f) The late renewal fee for the ninety (90) day grace period, as well as licensure for a three (3) year period, shall be a:

1. \$300 fee; and
2. Penalty fee of fifty (50) dollars.

Section 5. Reinstatement of a Canceled Registration, Certificate, or Licensure. (1) A canceled registration may be reinstated within one (1) year of the anniversary date of issue of renewal by:

(a) Submitting a completed Application for Reinstatement;

(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 [and of ten (10) hours of continuing education during the one (1) year period]; and

(c) Payment of a \$200 reinstatement fee for registration for a three (3) year period.

(2) A canceled certificate of a certified alcohol and drug counselor, certified drug and alcohol counselor associate II, and certified alcohol and drug counselor associate I may be reinstated within one (1) year of the anniversary date of issue of renewal by:

(a) Submitting a completed Application for Reinstatement;

(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 [and of twenty (20) hours of continuing education during the one (1) year period]; and

(c) Payment of a \$300 reinstatement fee, for certification for a three (3) year period.

(3) A canceled license may be reinstated within one (1) year of the anniversary date of issue of renewal by:

(a) Submitting a completed Application for Reinstatement;

(b) Proof of completion of continuing education in accordance with 201 KAR 35:040 [and of twenty (20) hours of continuing education during the one (1) year period]; and

(c) Payment for licensure for a three (3) year period, which shall be a:

1. \$300 fee; and
2. Penalty fee of \$100.

Section 6. Duplicate Credential ~~fee~~ [and ID Card Fees]. [(4)] The fee for a duplicate credential shall be twenty (20) dollars.

(2) The fee for a duplicate ID card shall be ten (10) dollars.

Section 7. Inactive Status Fees. (1) The enrollment fee for voluntarily placing a registration, certificate, or license in inactive status in accordance with 201 KAR 35:080 shall be fifty (50) dollars.

(2) The annual renewal fee for a registration, certificate, or license enrolled in inactive status shall be twenty-five (25) dollars based on the renewal date.

(3)(a) The fee for reactivation of a registration shall be \$100 for a three (3) year period commencing on the date the board approves the application for reactivation.

(b) The fee for reactivation of a registration as a registered

temporary registered alcohol and drug peer support specialist, certificate as a temporary certified alcohol and drug counselor, certificate as a certified alcohol and drug counselor associate I, and certificate as a certified alcohol and drug counselor associate II shall be fifty (50) dollars for a two (2) year period commencing on the date the board approves the application for reactivation.

(c) The fee for reactivation of a certificate as a certified alcohol and drug counselor shall be \$200 for a three (3) year period commencing on the date the board approves the application for reactivation.

(d)[(e)] The fee for reactivation of a license shall be \$300 for a three (3) year period commencing on the date the board approves the application for reactivation.

Section 8. Continuing Education Fees. (1) For purposes of this administrative regulation, a continuing education sponsor shall be an individual or entity that provides a program of continuing education to credential holders that has been reviewed and approved by the board to meet the continuing education requirements set forth in 201 KAR 35:040.

(2) Approvals may consist of a single workshop or a program of courses and shall be effective for one (1) year from the date of approval.

(3) The fee for approval of an application for a single program provider shall be fifty (50) dollars.

(4) The fee for approval of an application for a continuing education sponsor providing a program of courses shall be \$250.

(5) Continuing education sponsors who have received approval for their program of courses may apply for renewal of the approval in accordance with 201 KAR 35:040 and shall pay an annual renewal fee of \$150.

(6)(a) The fee for review of an application for a substantial change in curriculum of an approved program shall be fifty (50) dollars.

(b) A substantial change shall be considered as the addition of a workshop or course to a pre-approved program, or changes to the content of a pre-approved workshop or program which is in excess of twenty (20) percent.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KBADC Form 1, Application", March 2021~~[June 2015]~~;

(b) "KBADC Form 16, Application for Renewal", March 2021~~[June 2015]~~; and

(c) "KBADC Form 17, Application for Reinstatement", March 2021~~[June 2015]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32~~[911 Leawood Drive]~~, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 24, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 24, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 24, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android: <https://us02web.zoom.us/j/88015845024?pwd=WnhsNmR3SGJwRXM0YktrM1psbkVxZz09>, Password: 203666, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application, comprehensive examination, credential, renewal, penalty, reinstatement, duplicate credential, inactive status, and continuing education fees.

(b) The necessity of this administrative regulation: The necessity of this regulation is to advise the public, credential holders, and applicants of fees to be assessed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as KRS 309.0813(12), the authorizing statute, gives the board the ability to promulgate regulations regarding the establishment of fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statutes by establishing the fees to be assessed for the application, comprehensive examination, credential, renewal, penalty, reinstatement, duplicate credential, inactive status, and 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 change the existing administrative regulation by: (1) adding an application fee of fifty (50) dollars for a certified alcohol and drug counselor associate I and II; (2) decreasing the time to complete the examination required by the board from two (2) years to one (1) year; (3) deleting, as duplicative of other regulations, the fee for refiling the application form; (4) deleting a provision allowing credentialing fees for one credential to cover credentialing fees for other credentials obtained within three (3) years; (5) prohibiting the use of the titles temporary alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II for credential holders whose certification has canceled; (6) setting the renewal fee for a temporary registered alcohol and drug peer support specialist at fifty (50) dollars for a two (2) year period and the late renewal fee at \$100; (7) setting the renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$100 for a two (2) year period; (8) setting the late renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$150; (9) removing requirement from this regulation that credential holders complete ten (10) hours of continuing education for reinstatement; (10) adding certified alcohol and drug counselor associate I and II to the list of credential holders that may reinstate a canceled certificate; (11) removing requirement of twenty (20) hours of continuing education during a one (1) year period for reinstatement; (12) removing the requirement of twenty (20) hours of continuing education during the one (1) year period of cancellation to reinstate a license; (13) deleting the option for a duplicate ID Card; (14) deleting the fee for a duplicate ID card; (15) establishing the fee for reactivation of a registered temporary alcohol and drug peer support specialist, temporary certified alcohol and drug counselor, certified alcohol and drug counselor

associate I, certified alcohol and drug counselor associate II credentials at fifty (50) dollars; (14) updating the board's address; and (15) adding the board's Web site address.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish fees for credential holders and other services provided by the board.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 309.0813(12), which gives the board the ability to promulgate regulations regarding the establishment of fees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by establishing the fees to be assessed for the application, credential, renewal, penalty, reinstatement, duplicate credential, and inactive status for the alcohol and drug counselor associate I and II.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: Applicants and credential holders shall pay a fee associated with the credential or services sought.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This amendment to the administrative regulation establishes new fees for the newly created credentials of alcohol and drug counselor associate I and II.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, applicants and credential holders will know the fees associated with their credential and services provided.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(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 regulation establishes: an application fee of fifty (50) dollars for certified alcohol and drug counselor associate I and II; a renewal fee of fifty (50) dollars for a temporary registered alcohol and drug peer support specialist; a late renewal fee of \$100 for registration as a temporary registered alcohol and drug peer support specialist; a renewal fee of \$100 for certification as a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, and a temporary certified alcohol and drug counselor; a late renewal fee of \$150 for a temporary certified alcohol and drug counselor, a certified alcohol and drug counselor associate I, and a certified alcohol and drug counselor associate II; a reinstatement fee of \$300 for a certified alcohol and drug

counselor, certified drug and alcohol counselor associate II, and certified alcohol and drug counselor associate I; and a reactivation fee of fifty (50) dollars for a temporary certified alcohol and drug counselor, certificate as a certified alcohol and drug counselor associate I, and certificate as a certified alcohol and drug counselor associate II.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation established directly or indirectly the following fees: an application fee of fifty (50) dollars for certified alcohol and drug counselor associate I and II; a renewal fee of fifty (50) dollars for a temporary registered alcohol and drug peer support specialist; a late renewal fee of \$100 for registration as a temporary registered alcohol and drug peer support specialist; a renewal fee of \$100 for certification as a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, and a temporary certified alcohol and drug counselor; a late renewal fee of \$150 for a temporary certified alcohol and drug counselor, a certified alcohol and drug counselor associate I, and a certified alcohol and drug counselor associate II; a reinstatement fee of \$300 for a certified alcohol and drug counselor, certified drug and alcohol counselor associate II, and certified alcohol and drug counselor associate I; and a reactivation fee of fifty (50) dollars for a temporary certified alcohol and drug counselor, certificate as a certified alcohol and drug counselor associate I, and certificate as a certified alcohol and drug counselor associate II.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all credential holders.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (12), 309.083, 309.0831, 309.0832, 309.0833(1)(a), 309.084, 309.0841, 309.0842, and 309.085.

(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? The board is unable to determine how much revenue this administrative regulation will generate for state or local government for the first year. The amendments to this administrative regulation: set an application fee of fifty (50) dollars for a certified alcohol and drug counselor associate I and II; set the renewal fee for a temporary registered alcohol and drug peer support specialist at fifty (50) dollars for a two (2) year period and the late renewal fee at \$100; set the renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$100 for a two (2) year period; set the late renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$150; delete the fee for a duplicate ID card; and establish the fee for reactivation of a registered temporary alcohol and drug peer support specialist, temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, certified alcohol and drug counselor associate II credentials at fifty (50) dollars.

(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 board is unable to determine how much revenue this administrative regulation will generate for state or local government

on an ongoing basis. The amendments to this administrative regulation: set an application fee of fifty (50) dollars for a certified alcohol and drug counselor associate I and II; set the renewal fee for a temporary registered alcohol and drug peer support specialist at fifty (50) dollars for a two (2) year period and the late renewal fee at \$100; set the renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$100 for a two (2) year period; set the late renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$150; delete the fee for a duplicate ID card; and establish the fee for reactivation of a registered temporary alcohol and drug peer support specialist, temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, certified alcohol and drug counselor associate II credentials at fifty (50) dollars.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Amendment)

201 KAR 35:025. Examinations.

RELATES TO: KRS 309.083(5), 309.0831(5), 309.0832(4), 309.0833

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written examination, which applicants are required to successfully complete. This administrative regulation establishes those examination requirements.

Section 1. Comprehensive Examination. (1) An applicant for registration as an alcohol and drug peer support specialist shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(2) An applicant for certification as a certified alcohol and drug counselor shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(3) An applicant for licensure shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

Section 2. Remediation Plan. (1) If an applicant fails the examination, the applicant shall:

(a) Not retake the examination within ninety (90) days of the failed examination date;

(b) Submit a KBADC Form 19, Re-Examination Application; and

(c) Submit the examination fee for the respective examination listed in 201 KAR 35:020, Section 2.

(2) If the applicant fails the examination twice or more, the applicant shall submit a remediation plan after each failed examination:

(a) To address the deficiencies cited in the examination results; and

(b) Cosigned by the board-approved supervisor.

(3) Upon completion of the remediation plan approved by the board, the applicant may request permission to retake the

examination by filing a KBADC Form 19, Re-Examination Application, and submitting the examination fee for the respective examination listed in 201 KAR 35:020, Section 2.

Section 3. Incorporation by Reference. (1) "KBADC Form 19, Re-Examination Application", December 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 321911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021
FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 24, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 24, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 24, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/88015845024?pwd=Wnh5NmR3SGJwRXM0YktrM1psbkVxZz09>, Password: 203666, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the comprehensive examination requirement for each applicant and the process that an applicant must satisfy if the applicant fails the examination.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure for the examination and the process that an applicant must satisfy if the applicant fails the examination.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the establishment of examinations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the comprehensive examination requirement for each applicant and the process that an applicant must satisfy if the applicant fails the examination.

(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 change the existing administrative regulation by clarifying that applicants for certification as a certified alcohol and drug counselor are required to take an examination and no other applicants for certification. The amendment also updates the board's address.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because two new credentials for certification were created by the General Assembly that does not require an applicant to take a comprehensive examination. This amendment clarifies that only applicants for certification as a certified alcohol and drug counselor are required to take a comprehensive examination.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 309.0813(4). The authorizing statute gives the board the ability to promulgate regulations regarding the establishment of examinations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assist in the effective administration of the statutes by clarifying that only applicants for certification as a certified alcohol and drug counselor are required to take an examination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: An applicant for certification as a certified alcohol and drug counselor must take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: An applicant for certification as a certified alcohol and drug counselor must pay a fee to take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, an applicant has the opportunity to successfully pass the required examination.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(9) TIERING: Is tiering applied? Tiering was not applied. This regulation does not distinguish between similarly situated

individuals on the basis of any factor.

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 Board of Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1) (effective March 1, 2021) requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(4) (effective March 1, 2021) requires the board to approve the examination required of applicants for licensure or certification as alcohol and drug counselors and applicants for registration as alcohol and drug peer support specialists, and promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and grading of the examination. KRS 309.0813(5) (effective March 1, 2021) requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A to define the process to register with the board as a registered alcohol and drug peer support specialist, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor.

(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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Amendment)

201 KAR 35:040. Continuing education requirements.

RELATES TO: KRS 309.085(1)(b)

STATUTORY AUTHORITY: KRS 309.0813(2), 309.085(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(2) and 309.085(1)(b) authorize the Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Basic Continuing Education Requirements. (1)(a) A

minimum of ten (10) continuing education hours each year shall be accrued by each person holding a registration as an alcohol and drug peer support specialist.

(b) A minimum of thirty (30) continuing education hours, including at least six (6) continuing education hours in ethics, each year shall be accrued by each person holding a certificate as a certified alcohol and drug counselor associate I and a certified alcohol and drug counselor associate II.

(c) A minimum of sixty (60) continuing education hours shall be accrued by each person holding a certificate as a certified alcohol and drug counselor during the three (3) year certification period for renewal with at least three (3) continuing education hours in ethics.

(d)[(e)] A minimum of sixty (60) continuing education hours shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor during the three (3) year licensure period for renewal with at least three (3) continuing education hours in ethics.

(e)[(d)] A minimum of twenty (20) continuing education hours each year shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor associate. A licensed clinical alcohol and drug counselor associate shall obtain at least three (3) continuing education hours in ethics during the renewal cycle.

(2) All continuing education hours shall be relevant to the field of alcohol and drug counseling.

(3) A credential holder shall determine prior to attending a specific continuing education program that the program:

- (a) Has been approved by the board; or
- (b) Is offered or sponsored by an organization approved by the board to provide continuing education programs.

(4) If the specific continuing education program is not preapproved as established in subsection (3) of this section, the credential[certificate] holder may apply for board approval by providing the information required by Section 4 of this administrative regulation.

(5) A person credentialed by the board[credential holder] shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management as required by KRS 210.366. The suicide assessment, treatment, and management continuing education course shall be approved by the board, be provided by an entity identified in Section 2(4)(b) of this administrative regulation, or be approved by one (1) of the following boards:

- (a) Kentucky Board of Social Work;
- (b) Kentucky Board of Licensure of Marriage and Family Therapists;
- (c) Kentucky Board of Licensed Professional Counselors;
- (d) Kentucky Board of Licensure for Pastoral Counselors;
- (e) Kentucky Board of Examiners of Psychology; or
- (f) Kentucky Board of Licensure for Occupational Therapy.

Section 2. Methods of Acquiring Continuing Education Hours.

(1) Continuing education hours applicable to the renewal of the credential shall be directly related to the professional growth and development of a credential holder.

(2) Continuing education hours may be earned by:

- (a) Attending a continuing education program that has prior approval by the board;
- (b) The completion of appropriate academic coursework; or
- (c) Other alternative methods approved by the board in accordance with subsection (6) of this section.

(3) At least fifty (50) percent of the required continuing education hours for a credential holder shall be earned through live synchronous or[] face-to-face[] continuing education presentations.

(4) Attendance at continuing education programs automatically approved by the board.

(a) A program relevant to the practice of alcohol and drug counseling that is provided, approved, or sponsored by any of the providers listed in paragraph (b) of this subsection shall be:

- 1. Approved without further review; and
- 2. Exempt from the program fee established in 201 KAR 35:020, Section 8.

(b) The provisions of this subsection shall apply to the following providers:

- 1. The National Association of Addiction Professionals (NAADAC) and its member boards;
- 2. The International Certification and Reciprocity Consortium (ICRC);
- 3. The Kentucky Cabinet for Health and Family Services, Division of Mental Health and Substance Abuse and its subcontractors;
- 4. Community Mental Health Centers;
- 5. The Kentucky School of Alcohol and Drug Studies;
- 6[5]. An Addiction Technology Transfer Center (ATTC);
- 7[6]. State or United States Regional Addiction Training Institute;

8[7]. Clinical Applications of the Principles on Treatment of Addictions and Substance Abuse (CAPTASA); or

9[8]. National Conference on Addiction Disorders (NCAD).

(5)(a) Academic coursework. An academic course, as defined in 201 KAR 35:010, Section 1(1), shall not require board review or approval.

(b) A general education course, or elective designated to meet academic degree requirements, shall be acceptable for continuing education credit if it is relevant to the practice of alcohol and drug counseling.

(c) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling fifteen (15) continuing education hours.

(6) Alternative methods for obtaining continuing education hours; programs requiring board review and approval. The following activities shall be reviewed by the board to determine whether or not the activity complies with the requirements of Section 3(2) of this administrative regulation:

(a)1. A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (4)(b) of this section; or

2. A program or academic course presented by the credential holder, who shall earn two (2) continuing education hours for each contact hour of instruction, unless it is repeated instruction of the same course; or

(b) A relevant publication in a professionally recognized or juried publication authored by the credential holder, who shall earn continuing hours as follows:

- 1. Five (5) continuing education hours for each published abstract or book review in a refereed journal;
- 2. Ten (10) continuing education hours for each book chapter or monograph;
- 3. Fifteen (15) continuing education hours for each published article in a refereed journal; and
- 4. Twenty (20) continuing education hours for each published book.

Section 3. Procedures for Preapproval of Continuing Education Programs.

(1) An applicant seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least thirty (30) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(2) A continuing education activity shall be qualified for approval if the activity:

- (a) Is an organized program of learning;
- (b) Pertains to subject matter relating to alcohol and drug counseling;
- (c) Enhances the professional competence of the credential holder by:

- 1. Refreshing knowledge and skills; or
- 2. Educating on a new topic or subject; and
- (d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

(3)(a) The board may monitor or review a continuing education program approved by the board, in accordance with this section.

(b) Upon evidence of significant variation in the program presented from the program approved, the board shall withdraw

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approval of the hours granted to the program.

Section 4. Subsequent Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is subsequently secured from the board.

(2) The following information shall be submitted for board review of a program:

- (a) A published course or seminar description;
- (b) The name and qualifications of the instructor;
- (c) A copy of the program agenda indicating hours of education;
- (d) Number of continuing education hours requested;
- (e) Official certificate of completion or college transcript from the sponsoring agency or college; and
- (f) Continuing Education Program Application for continuing education credits approval.

Section 5. Application for Approved Sponsor. (1) A company, individual, or association that wishes to be designated as an approved sponsor of continuing education shall complete a Continuing Education Sponsor Application, and pay the provider fee established in 201 KAR 35:020, Section 8.

(2) An approved sponsor of continuing education shall be allowed to advertise the program as preapproved to meet the continuing education requirements for credential renewal.

(3)(a) Approval shall be for one (1) year from date of approval unless substantial course changes occur.

(b) For purposes of this section, a substantial course change shall be a change in the curriculum in excess of twenty (20) percent.

Section 6. Responsibilities and Reporting Requirements of Credential Holder; Audit. (1)(a)

During the renewal period, the board shall review at least fifteen (15) percent of all credential holders' documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

(b) Copies of supporting documentation submitted to the board shall be shredded and shall not be returned to the certificate holder upon completion of the audit process.

(c) Verification of continuing education hours shall not otherwise be reported to the board.

(2) A credential holder shall:

(a) Be responsible for obtaining the required continuing education hours;

(b) Identify personal continuing education needs and seek activities that meets those needs;

(c) Seek ways to integrate new knowledge, skills, and activities;

(d) Select approved activities by which to earn continuing education hours;

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as established in Section 3 of this administrative regulation;

(f) Document attendance, participation in, and successful completion of continuing education activity; and

(g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity.

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor;

(d) Receipt for the fee paid to the sponsor; or

(e) Written summary of experiences that are not formally or officially documented otherwise.

(4) Failure to comply with this administrative regulation shall constitute a violation of KRS 309.085(1)(b) and shall result in board:

(a) Refusal to renew credential;

(b) Suspension of credential; or

(c) Revocation of credential.

Section 7. Carryover of Continuing Education Hours Prohibited. Continuing education hours earned in excess of those required pursuant to Section 1 of this administrative regulation shall not be carried forward.

Section 8. Waiver or Extensions of Continuing Education. (1) On application, the board may grant 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 or serious injury of the credential holder;

(b) Serious illness of the credential holder or of 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 ~~credential~~[certificate] holder; and

(b) Accompanied by a verifying document signed by a licensed physician or an advanced practice registered nurse.

(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 credential holder shall reapply for the waiver or extension.

Section 9. Continuing Education Requirements for Reinstatement or Reactivation of a Credential. (1) A person requesting reinstatement of certification as a certified alcohol and drug counselor or licensure shall:

(a) Submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or

(b) Obtain thirty (30)[~~sixty (60)~~] hours of continuing education within six (6) months of reinstatement of certification as a certified alcohol and drug counselor or licensure.

(2) Failure to obtain thirty (30)[~~sixty (60)~~] hours within six (6) months shall result in termination of certification or licensure.

(3) A person requesting reinstatement of certification as a certified alcohol and drug counselor associate I or certified alcohol and drug counselor associate II shall submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested.

(4) A person requesting reinstatement of a registration shall:

(a) Submit evidence of receiving thirty (30) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or

(b) Obtain ten (10) hours of continuing education within six (6) months of reinstatement of registration.

(4) Failure to obtain ten (10) hours within six (6) months shall result in termination of registration.

(5) A person requesting reactivation of registration, certification, or licensure shall submit evidence of receiving twenty (20) hours of continuing education within one (1) year immediately preceding the date that reactivation is requested. A minimum of ten (10) hours shall be live synchronous or[,] face-to-face continuing education presentations.

(6) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 1 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Education Sponsor Application Form", 2008; and

(b) "Continuing Education Program Application", June 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of

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Alcohol and Drug Counselors, 500 Mero Street, 2 SC 32, Frankfort, Kentucky, telephone (502) 782-8814, Monday through Friday, 8:30 a.m. to 4:30 p.m.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 24, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 24, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 24, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/88015845024?pwd=WnhsNmR3SGJwRXM0YktrM1psbkVxZz09>, Password: 203666, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: KRS 309.0813(2) (effective March 1, 2021) requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A establishing continuing education for credential holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 309.0813(2) (effective March 1, 2021), by establishing continuing education for credential holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing continuing education requirements for credential holders.

(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 change the existing administrative regulation by: (1) requiring each person holding a certificate as a certified alcohol and drug counselor associate I and a certified alcohol and drug counselor associate II to complete a minimum of thirty (30) continuing education hours, including at least six (6) continuing education hours in ethics each year; (2) allowing live synchronous continuing education presentations to count as in-person trainings; (3) adding Community Mental Health Centers to the list of preapproved continuing education providers; (4) allowing reinstatement of a certification as a certified alcohol and drug

counselor or licensure by obtaining thirty (30) hours of continuing education within six (6) months of reinstatement; (5) requiring a person requesting reinstatement of certification as a certified alcohol and drug counselor associate I or II to submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; and (6) adding the board's Web site address.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish continuing education requirements for credential holders.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute, KRS 309.0813(2) (effective March 1, 2021), gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder. KRS 309.0841 (effective March 1, 2021) requires a certificate holder as a certified alcohol and drug counselor associate I, during the first twelve (12) months after initial licensure has been issued, to complete at least thirty (30) additional classroom hours of board-approved curriculum. KRS 309.0841 (effective March 1, 2021) requires a certificate holder as a certified alcohol and drug counselor associate II to have seventy (70) hours of approved classroom hours of board-approved curriculum of which twenty (20) hours shall have been obtained in the previous two (2) years.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing a continuing education requirement for all credential holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: A credential holder will be required to comply with the continuing education requirement or be subject to possible disciplinary action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The board is unable to determine how much it will cost each entity to comply with this amendment to the administrative regulation. Persons holding newly created credential will be required to obtain continuing education hours. Some programs cost money to attend.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, the credential holders will know the continuing education requirements expected of them by the board.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There

are no increases in fees or funding 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 did not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1) (effective March 1, 2021) requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(2) (effective March 1, 2021) requires the board to promulgate administrative regulations establishing continuing education for credential holders.

(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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Amendment)

201 KAR 35:050. Curriculum of study.

RELATES TO: KRS 309.083(4), (8), 309.0841, 309.0842

STATUTORY AUTHORITY: KRS 309.0813(1), (5), (6), 309.083(4), 309.0831(4), 309.0832(3), 309.0833(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.083(4), 309.0831(4), 309.0832(3), [and] 309.0833(1), 309.0841, 309.0842 require the Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing curriculum requirements for applicants for a credential. This administrative regulation identifies the areas of study that will satisfy the requirement.

Section 1. (1) Registration. An applicant seeking registration as

an alcohol and drug peer support specialist shall:

(a) Complete ~~forty (40)~~~~[sixty (60)]~~ classroom hours, which shall include:

- 1. Sixteen (16) hours of interactive training in ethics of which eight (8) hours shall consist of face-to-face training;
- 2. Three (3) hours of domestic violence training;
- 3. Two (2) hours of training in the transmission, control, treatment, and prevention of the human immunodeficiency virus;
- 4. Ten (10) hours of advocacy training;
- 5. Ten (10) hours of training in mentoring and education; and
- 6. Ten (10) hours of training in recovery support; and

(b) File with the board KBADC Form 5, Peer Support Specialist Alcohol/Drug Training Verification Form.

(2) Certification as a certified alcohol and drug counselor associate I.

(a) An applicant seeking certification as a certified alcohol and drug counselor associate I shall comply with the board-approved curriculum in KRS 309.0841; and

(b) File with the board KBADC Form 20, Certified Alcohol and Drug Counselor Associate I, Verification of Board-Approved Training.

(3) Certification as a certified alcohol and drug counselor associate II.

(a) An applicant seeking certification as a certified alcohol and drug counselor associate II shall comply with the board-approved curriculum requirements KRS 309.0842; and

(b) File with the board a KBADC Form 22, Certified Alcohol and Drug Counselor Associate II Verification of Classroom Training.

(4) Certification as an alcohol and drug counselor.

(a) An applicant seeking certification as an alcohol and drug counselor shall:

1. Complete ~~300~~~~[270]~~ classroom hours that are specifically related to the knowledge and skills necessary to perform the following alcohol and drug counselor competencies and shall include the following domains:

- a. Screening assessment and engagement~~[Understanding addiction];~~
- b. Treatment planning, collaboration, and referral~~[Treatment knowledge];~~
- c. Counseling~~[Application to practice]; and~~
- d. Professional and ethical responsibilities~~[Professional readiness;~~
- e. ~~Clinical evaluation;~~
- f. ~~Treatment planning;~~
- g. ~~Referral;~~
- h. ~~Service coordination;~~
- i. ~~Counseling;~~
- j. ~~Client, family, and community education;~~
- k. ~~Documentation; and~~
- l. ~~Professional and ethical responsibilities]; and~~

2. File with the board KBADC Form 10, Certified Alcohol and Drug Counselor~~;~~ Verification of Classroom Training.

(b) A minimum of six (6) hours of the total ~~300~~~~[270]~~ hours shall be interactive, face-to-face ethics training relating to counseling.

(c) Two (2) hours of the total ~~300~~~~[270]~~ hours shall be specific to transmission, control, and treatment of the human immunodeficiency virus and other sexually transmitted diseases.

(d) Three (3) hours of the total ~~300~~~~[270]~~ hours shall be specific to domestic violence.

~~(5)~~~~[(3)]~~ Licensure.

(a) An applicant seeking licensure as a licensed clinical alcohol and drug counselor or associate shall:

1. Complete 180 classroom hours of curriculum that are specifically related to the knowledge and skills necessary to perform the following alcohol and drug counselor competencies and shall include the following domains:

- a. Screening assessment and engagement~~[Understanding addiction];~~
- b. Treatment planning, collaboration, and referral~~[Treatment knowledge];~~
- c. Counseling~~[Application to practice]; and~~
- d. Professional and ethical responsibilities~~[Professional~~

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readiness;

- e. Clinical evaluation;
- f. Treatment planning;
- g. Referral;
- h. Service coordination;
- i. Counseling;
- j. Client, family, and community education;
- k. Documentation; and
- l. Professional and ethical responsibilities]; and

2. File with the board KBADC Form 11, Verification of Classroom Training.

(b) A minimum of six (6) hours of the total 180 hours shall be interactive, face-to-face ethics training relating to counseling.

(c) Two (2) hours of the total 180 hours shall be specific to transmission, control, and treatment of the human immunodeficiency virus and other sexually transmitted diseases.

(d) Three (3) hours of the total 180 hours shall be specific to domestic violence.

Section 2. (1) Attendance at conferences, workshops, seminars, or in-service training related to addictions shall be acceptable to meet the requirements of Section 1 of this administrative regulation if the board determines that the activity:

- (a) Is an organized program of learning;
- (b) Covers an area listed in Section 1 of this administrative regulation; and
- (c) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

(2) One (1) semester hour of study from an accredited college or university credit shall equal fifteen (15) classroom hours.

(3) Publication on a subject relevant to addictions therapy may be submitted to the board. Credit shall be granted as established in this subsection.

(a) A chapter in a book shall be equivalent to ten (10) classroom hours.

(b) 1. Authoring or editing a book relevant to addictions therapy shall be given credit equivalent to thirty (30) classroom hours.

2. An applicant shall submit a copy of the title page, table of contents, and bibliography.

(c) 1. Publication in a professional refereed journal shall be equivalent to fifteen (15) classroom hours.

2. An applicant shall submit the journal table of contents and a copy of the article as it appeared in the journal including bibliography.

Section 3. (1) A list of courses the applicant wishes to have considered shall be organized by domains[~~core area~~] as established in Section 1 of this administrative regulation and shall include documentation to verify that the course satisfies the requirements of that section.

- (2) Appropriate documentation of the course shall include:
 - (a) Date;
 - (b) Title;
 - (c) Description;
 - (d) Sponsoring organization;
 - (e) Presenter and presenter's credentials;
 - (f) Number of contact hours attended; and
 - (g) Certificates of attendance or transcript.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KBADC Form 5, Peer Support Specialist Alcohol/Drug Training Verification Form", March 2021[~~March 2017~~];

(b) "KBADC Form 10, Certified Alcohol and Drug Counselor Verification of Classroom Training", March 2021[~~June 2015~~]; and

(c) "KBADC Form 11, Verification of Classroom Training", March 2021[~~June 2015~~].

(d) "KBADC Form 20, Certified Alcohol and Drug Counselor Associate I, Verification of Board-Approved Training", March 2021;

(e) "KBADC Form 21, Certified Alcohol and Drug Counselor Associate I, Verification of Board-Approved Training for First Twelve (12) Months After Initial Certification as Associate I", March

2021;

(f) "KBADC Form 22, Certified Alcohol and Drug Counselor Associate II Verification of Board-Approved Curriculum", March 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32[911-Leawood Drive], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 24, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 24, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 24, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link:

<https://us02web.zoom.us/j/88015845024?pwd=WnhsNmR3SGJwRXM0YktrM1psbkVxZz09>, Password: 203666, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the required education for a credential holder.

(b) The necessity of this administrative regulation: The administrative regulation is necessary under: (1) KRS 309.083(4) (effective March 1, 2021), which requires applicants for certification as an alcohol and drug counselor to meet all education requirements of the International Certification and Reciprocity Consortium for the Alcohol and Drug Counselors (ADC); (2) KRS 309.0831(4) (effective March 1, 2021), which requires an applicant for registration as an alcohol and drug peer support specialist to have completed at least forty (40) classroom hours of board-approved curriculum; (3) KRS 309.0832(3) (effective March 1, 2021), which requires an applicant for licensure as a licensed alcohol and drug counselor to meet all education requirements of the International Certification and Reciprocity Consortium for the Advanced Alcohol and Drug Counselor (AADC); (4) KRS 309.0833(1)(b) (effective March 1, 2021), which requires an applicant for licensure as a licensed alcohol and drug counselor associate to meet all education requirements of the International Certification and Reciprocity Consortium for the Advanced Alcohol and Drug Counselor (AADC); (5) KRS 309.0841(1)(c), which requires an applicant for certification as a certified alcohol and drug counselor associate I to have completed forty (40) classroom hours of board-approved curriculum; and (6) KRS 309.0842(3), which requires an applicant for certification as a

certified alcohol and drug counselor associate II to have seventy (70) hours of approved classroom hours of board-approved curriculum.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for education for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the educational requirements of a credential holder.

(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 change the existing administrative regulation in eight (8) ways: (1) reducing the number of hours from sixty (60) to forty (40) for an applicant seeking registration as an alcohol and drug peer support specialist; (2) requiring applicants for certification as a certified alcohol and drug counselor associate I to comply with the board-approved curriculum requirements of KRS 309.0841; (3) requiring applicants for certification as a certified alcohol and drug counselor associate I to file a Form 19 to verify training; (4) requiring applicants for certification as a certified alcohol and drug counselor associate II to comply with the board-approved curriculum requirements of KRS 309.0842; (5) increasing the number of classroom hours for a certified alcohol and drug counselor from 270 to 300 to conform with the requirements of the International Certification and Reciprocity Consortium; (6) changing the twelve (12) core functions to four (4) domains for certified alcohol and drug counselor, licensed clinical alcohol and drug counselors and associates; (7) adding new forms to the materials incorporated by reference; and (8) adding the board's Web site address.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish a required education for a credential holder with a registration or license issued by the board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for education for a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing an education requirement for all credential holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: A credential holder will be required to comply with the education requirement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no new cost associated to the amendment related to the amendment of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: The credential holders will know the education requirements expected of them by the board.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (5), and (6), 309.083, 309.0831, 309.0832, 309.0833, 309.0841, 309.0842.

(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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

BOARDS AND COMMISSIONS Board of Alcohol and Drug Counselors (Amendment)

201 KAR 35:055. Temporary registration or certification.

RELATES TO: KRS 309.083, 309.0831
STATUTORY AUTHORITY: KRS 309.0813(1), (5), 309.083, 309.0831

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) and (5) authorize the board to promulgate administrative regulations establishing the requirements for registering with the Board of Alcohol and Drug Counselors as a registered alcohol and drug peer support specialist, certified

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alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor. This administrative regulation establishes the requirements for temporary credentials.

Section 1. Application for Temporary Registration. (1) An applicant for temporary registration as a certified alcohol and drug peer support specialist may submit an application after the requirements established in KRS 309.0831(1), (2), (6), (7), and (10) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed KBADC Form 1, incorporated by reference in 201 KAR 35:020. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);

2. Proof of a high school diploma or equivalent;

3. A signed agreement to abide by the standards of practice and code of ethics approved by the board;

4. KBADC Form 2, Attestation of Recovery, in which the applicant declares that he or she has been in recovery for a minimum of one (1)~~two (2)~~ years from a substance-related disorder; and

5. A supervision agreement signed by the applicant and the applicant's supervisor.

Section 2. Application for Temporary Certification. (1) An applicant for temporary certification as a certified alcohol and drug counselor may submit KBADC Form 1, incorporated by reference in 201 KAR 35:020, after the requirements established in KRS 309.0831(1), (2), (6), (7), and (10) are met.

(2) The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);

2. An official transcript for the highest level~~[all levels]~~ of education required for certification;

3. A signed agreement to abide by the standards of practice and code of ethics approved by the board; and

4. A supervision agreement signed by the applicant and the applicant's supervisor.;

Section 3. Period of Temporary Registration~~[Credential]~~. (1) The period of a temporary registration~~[credential]~~ shall be terminated upon the passage of two (2) years from issuance.

Section 4. Period of Temporary Certification. (1) The period of temporary certification shall be terminated upon the passage of two (2) years from issuance.

(2) The board may approve an extension of the period of a temporary certification ~~[credential]~~ for a maximum of two (2) years if a:

(a) Written request is submitted that is cosigned by the board approved supervisor; and

(b) One (1) of the following exists:

1. A circumstance delineated in 201 KAR 35:040, Section 8(1); or

2. The temporary certified alcohol and drug

counselor~~[credential holder]~~ presents evidence of insufficient time to:

a. Complete supervision, training, or work experience; or

b. Successfully pass the required examination.

(3) The board shall not grant more than three (3)~~two (2)~~ extensions of the period of a temporary certification~~[credential]~~.

Section 5~~[4]~~. Incorporation by Reference. (1) "KBADC Form 2, Attestation of Recovery", March 2021~~[June 2015]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Alcohol and Drug Counselors, 500 Mero St. 2 SC 32~~[941 Leawood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: https://adc.ky.gov.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 24, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 24, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 24, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/88015845024?pwd=WnhsNmR3SGJwRXM0YktrM1psbkVxZz09>, Password: 203666, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application process for an individual to obtain a temporary registration or certification.

(b) The necessity of this administrative regulation: The necessity of this regulation is to provide the board with regulatory control of those individuals who are engaged in peer support services or alcohol and drug counseling prior to full credentialing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for obtaining registration or certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the application process for an individual to obtain a temporary registration or certification

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by: (1) replacing the requirement that an applicant for registration as a temporary registered alcohol and drug support specialist attest to two (2) years of recovery from a substance-abuse disorder with one (1) year; (2) replacing requirement that applicant provide transcripts of all levels of education with the highest level of education; (3) making the period of temporary certification two (2) years; (4) clarifying that a credential holder in Section 4 is a temporary certified alcohol and drug counselor; (4) replacing requirement that the board not grant more than two (2) extensions of the period of temporary certification with three (3); (5) updating the board's address; and (6) adding the board's Web site address.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to legislative changes to KRS 309.0831(7) (effective March 1, 2021) and to allow temporary certificate holders additional time to complete requirements for certification.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes. KRS 309.0831(7) (effective March 1, 2021) requires an applicant for registration as an alcohol and drug peer support specialist to attest to being in recovery for a minimum of one (1) year from a substance-related disorder. Prior to March 1, 2021, KRS 309.0831 required an applicant be in recovery for two (2) years. The amendment also conforms to KRS 309.0813(1) and (5) (effective March 1, 2021), which requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A to define the process to register with the board as registered alcohol and drug peer support specialist and a certified alcohol and drug counselor.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assist in the effective administration of statutes by clearly defining for applicants the process for registration and certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: An individual can obtain a credential during the period the applicant is fulfilling the supervision requirement and course work requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Licensees and permit holders will have no cost associated with the amendment. The applicant will have to pay a fee to apply for the temporary credential.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, an individual has a credential during the period the applicant is fulfilling the supervision requirement and course work requirements.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders

and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments to this administrative regulation. The fees for the temporary credentials are listed in 201 KAR 35:020.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1) and (5), 309.083, 309.0831.

(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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Amendment)

201 KAR 35:070. Supervision experience.

RELATES TO: KRS 309.0814, 309.083(4), 309.0831, 309.0832, 309.0833, 309.0841, 309.0842

STATUTORY AUTHORITY: KRS 309.0813(1), (3), (5), 309.0814(1), 309.083(3), 309.0831(3), 309.0832(10), 309.0833(2), 309.086

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be credentialed. This administrative regulation establishes the standards for the accumulation of required supervised work experience.

Section 1. (1)(a) Peer Support Specialist Supervision. Peer support specialist supervision shall continue throughout the period

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of registration. The supervision shall include the four (4) following domains:

1. Advocacy;
2. Ethical Responsibility;
3. Mentoring and Education; and
4. Recovery and Wellness Support.

(b) A supervisor of a peer support specialist shall complete and submit KBADC Form 8, Peer Support Specialist Verification of Supervision, that documents the twenty-five (25) hours of direct supervision.

(2) Clinical Supervision for Certification and Licensure Applicants. Clinical supervision shall ~~consist of at least 300 hours and shall~~ include a minimum of ten (10) hours in each of the following ~~four (4) domains~~~~twelve (12) core functions~~:

- (a) ~~Screening assessment and engagement~~~~Screening~~;
- (b) ~~Treatment planning, collaboration, and referral~~~~Intake~~;
- (c) ~~Counseling; and~~~~Client orientation~~;
- (d) ~~Professional and ethical responsibilities~~~~Assessment~~;
- (e) ~~Treatment planning~~;
- (f) ~~Counseling~~;
- (g) ~~Case management~~;
- (h) ~~Crisis intervention~~;
- (i) ~~Client education~~;
- (j) ~~Referral~~;
- (k) ~~Reports and recordkeeping; and~~
- (l) ~~Consultation~~.

(3) Clinical supervision shall meet the minimum requirements of the following:

(a) For applicants with a high school diploma or high school equivalency diploma requires 300 hours of clinical supervision with a minimum of ten (10) hours in each domain listed in subsection (2);

(b) For applicants with an associate's degree in a relevant field requires 250 hours of clinical supervision with a minimum of ten (10) hours in each domain;

(c) For applicants with a bachelor's degree in a relevant field requires 200 hours of clinical supervision with a minimum of ten (10) hours in each domain; and

(d) For applicants with an master's degree or higher in a relevant field requires 100 hours of clinical supervision with a minimum of ten (10) hours in each domain.

(4)(a) Clinical supervision may occur in individual or in group settings.

(b) The methods of clinical supervision include:

1. Face-to-face;
2. Video conferencing; or
3. Teleconferencing.

~~(4) A minimum of 200 hours of clinical supervision shall be conducted face-to-face in an individual or group setting.~~

(5) Supervision that exceeds two (2) hours in a single day shall be accompanied by a written explanation justifying the length of supervision exceeding two (2) hours.

(6) Clinical supervisors shall complete and submit KBADC Form 13, Verification of Clinical Supervision, which documents the required~~300~~ hours of supervision that has occurred during the work experience, in the Application for Certification as an Alcohol and Drug Counselor, Application for Licensure as a Clinical Alcohol and Drug Counselor Associate, or Application for Licensure as a Clinical Alcohol and Drug Counselor, which are incorporated by reference in 201 KAR 35:020 .

(7)(6) For applicants applying for licensure who already possess a certified alcohol and drug counselor credential~~If the applicant qualifies for licensure~~, supervision obtained under KRS 309.083 prior to February 5, 2016 shall be calculated toward the ~~100~~~~300~~ hour supervision requirement under KRS 309.0832(3)(10) and Section (3)(d) of this administrative regulation.

Section 2. Except as provided by Section 1(6) of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee submitting a Supervisory Agreement to the board. The supervisor and supervisee shall also submit to the board the description of the

supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change unless extenuating circumstances prevent the submission ~~[the thirty (30) day requirement]~~.

Section 3. (1) All supervision requirements shall:

(a) Be met with face-to-face individual or group weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Sections 13 and 14 of this administrative regulation;

(b) Consist of not less than two (2) hours, two (2) times a month in the practice of alcohol and drug counseling; and

(c) Include additional supervision sessions, as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board for certain types of circumstances, such as distance, weather, or serious injury or illness of the supervisor or supervisee.

(3) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional hours of supervision than was previously approved by the board.

(4) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board within thirty (30) days of the termination.

Section 4. (1)(a) A certified alcohol and drug counselor or licensed clinical alcohol drug counselor shall submit a Form 4, Request to Provide Supervision, to become approved by the board to provide supervision.

(b) A certified alcohol and drug counselor who has at least two (2) years of post-certification experience, including Alcohol and Drug Counselor credentials transferred through reciprocity, and has attended the board-sponsored supervision training may be approved by the board to provide supervision~~for licensed clinical alcohol and drug counselor who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.~~

(c) A licensed clinical alcohol and drug counselor who has at least twelve (12) months of post-licensure experience, including Advanced Alcohol and Drug Counselor credentials transferred through reciprocity, or has attended the board-sponsored supervision training.

(2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours in supervision theory or techniques in each three (3) year renewal cycle. The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

(3) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor shall not be the supervisor of record for more than ~~twenty-five (25)~~~~twelve (12)~~ supervisees.

(4) A licensed clinical alcohol and drug counselor associate shall only be supervised by a licensed clinical alcohol and drug counselor.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 309.086 on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise or in the ability of a supervisee to function in the practice of alcohol and drug counseling in a competent manner.

(4) The supervisor shall control, direct, or limit the supervisee's practice to insure that the supervisee's practice of alcohol and drug counseling is competent.

(5) The supervisor of record shall be responsible for the practice of alcohol and drug counseling or peer support services provided by the supervisee. If the board receives a complaint~~initiates an investigation~~ concerning a supervisee, the board shall notify the supervisor of record~~investigation shall~~

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include the supervisor of record].

(6) For each ~~certificate or license holder~~[person] supervised, the supervisor shall maintain a KBADC Form 13, Verification of Clinical Supervision, for each supervisory session that shall include the domain covered, date of session, length of session, and method of supervision[type, place, and general content] of the session. For each registrant supervised, the supervisor shall maintain a KBADC Form 8, Peer Support Specialists Verification of Supervision Form, for each supervisory session that shall include the date, length, method, and domain covered during the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. (1) The supervisor of record shall submit the Supervisor Log for each supervisee to the board on an annual basis with a KBADC Form 14, Supervision Annual Report or as directed otherwise by the board.

(2) The report shall include:

- (a) A description of the frequency, format, and duration of supervision;
- (b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and
- (c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to each other.

(2) A request to have more than two (2) supervisors at one (1) time shall require a written request to the board, which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed clinical alcohol and drug counselor associate, [~~or an applicant for a certificate as a temporary~~ certified alcohol and drug counselor, certified alcohol and drug counselor associate I, or certified alcohol and drug counselor associate II, the supervisor of record shall:

- (1) Review all alcohol and drug assessments and treatment plans;
- (2) Review progress notes and correspondence on a regular basis to assess the competency of the supervisee to render alcohol and drug services;
- (3) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:
 - (a) Be updated and revised, as needed, and submitted to the board annually;
 - (b) Include intended format and goals to be accomplished through the supervisory process; and
 - (c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;
- (4) At least semi-annually, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror, or as a cotherapist;
- (5) Have direct knowledge of the size and complexity of the supervisee's caseload;
- (6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;
- (7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee;
- (8) Have knowledge of the supervisee's physical and emotional well-being if it has a direct bearing on the supervisee's competence to practice; and
- (9) Submit a completed KBADC Form 7, Supervision Evaluation, within thirty (30) days of termination of a [~~peer support special~~] supervisory agreement.

Section 9. If the supervisee is a peer support specialist, the supervisor of record shall:

(1) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:

- (a) Be updated and revised, as needed, and submitted to the board annually;
- (b) Include intended format and goals to be accomplished through the supervisory process; and
- (c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;
- (2) Review and countersign all peer recovery service plans;
- (3) Review peer recovery notes and correspondence on an as-needed basis to assess the competency of the supervisee to render peer recovery services;
- (4) At least once every two (2) months, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or direct observation;
- (5) Have direct knowledge of the size and complexity of the supervisee's caseload;
- (6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;
- (7) Have knowledge of the methods and techniques being used by the supervisee;
- (8) Have knowledge of the supervisee's physical and emotional well-being if it has a direct bearing on the supervisee's competence to practice; and
- (9) Submit a completed KBADC Form 9, Supervision Evaluation for Peer Support Specialist, within thirty (30) days of termination of a peer support special supervisory agreement.

Section 10. (1) The supervisee shall:

- (a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and
 - (b) Seek consultation from the supervisor, as needed, in addition to a regularly-scheduled supervisory session.
- (2) The supervisee shall:
- (a) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;
 - (b) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board, in accordance with the reporting schedule established in Section 6(1) of this administrative regulation; and
 - (c) Report to the board an apparent violation on the part of the supervisor.
- (3) Except as provided in Section 11 of this administrative regulation, a supervisee shall not continue to practice alcohol and drug counseling or peer support services if:
- (a) The conditions for supervision set forth in the supervisory agreement are not followed;
 - (b) There is a death or serious illness of the board-approved supervisor that results in the supervisor not being able to provide supervision; or
 - (c) The supervisory agreement is terminated by the board, the board-approved supervisor, or the supervisee for any reason other than the extenuating circumstances that allow temporary supervision in Section 11 of this administrative regulation.

Section 11. Temporary Supervision. (1) In extenuating circumstances, if a supervisee is without supervision, the supervisee may continue working up to sixty (60) calendar days under the supervision of a qualified mental health provider as defined by KRS 202A.011(12), a certified alcohol and drug counselor, or a licensed clinical alcohol and drug counselor while an appropriate board-approved supervisor is sought and a new supervisory agreement is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, the termination of the supervisor's employment, or termination of the supervisory agreement except for a violation of KRS 309.080 to 309.089, or 201 KAR Chapter 35.

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(2)(a) Within ten (10) days of the establishment of the temporary supervisory arrangement, the supervisee shall notify the board of the extenuating circumstances that have caused the supervisee to require temporary supervision.

(b) The supervisee shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the establishment of the temporary supervisory arrangement.

(c) The written plan shall include:

1. The name of the temporary supervisor;
2. Verification of the credential held by the temporary supervisor;
3. An email address and a postal address for the temporary supervisor and the supervisee; and
4. A telephone number for the temporary supervisor.

(3) The temporary supervisory arrangement shall expire after sixty (60) days of the establishment of the temporary supervisory arrangement.

(4) To avoid the expiration of a temporary supervisory arrangement:

(a) A temporary alcohol and drug counselor shall submit a completed KBADC Form 3, Supervisory Agreement; or

(b) A peer support specialist shall submit a completed KBADC Form 6, Peer Support Specialist Supervisory Agreement.

Section 12. Identification of Provider and Supervisor of Record.

The actual deliverer of a service shall be identified to the client, and the client shall be informed of the deliverer's credential and name of supervisor of record. [A billing for a rendered service shall identify which service was performed by the registered alcohol and drug peer support specialist, applicant as a certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or other provider who is supervised by the board approved supervisor of record.]

Section 13. Supervision of a Disciplined Credential Holder. (1)

The board shall appoint an approved supervisor to supervise a disciplined credential holder for the period of time defined by the board and a member of the board to serve as a liaison between the board and the appointed supervisor.

(2) The disciplined credential holder shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board-sponsored[approved] training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined credential holder and the board liaison to:

1. Summarize the actions and concerns of the board;
2. Review the goals and expected outcomes of supervision submitted by the board liaison;
3. Develop a specific plan of supervision approved by the board; and
4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined credential holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to insure that the disciplined credential holder's practice is in compliance with KRS 309.080 to 309.089, and 201 KAR Chapter 35;

(f) Report to the board any apparent violation on the part of the disciplined credential holder;

(g) Immediately report to the board in writing a change in the ability to supervise, or in the ability of the disciplined credential holder to function in the practice of peer recovery support or the practice of alcohol and drug[~~substance use disorders~~] counseling in a competent manner;

(h) Review and countersign assessments, as needed or appropriate;

(i) Review and countersign service or treatment plans, as needed or appropriate;

(j) Have direct observation of the disciplined credential holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined credential holder's caseload;

(l) Have knowledge of the therapeutic methods, modalities, or techniques being used by the disciplined credential holder; and

(m) Have knowledge of the disciplined credential holder's physical and emotional well-being if it has a direct bearing on the disciplined credential holder's competence to practice.

(5) The supervisor shall control, direct, or limit the disciplined credential holder's practice to ensure that the disciplined credential holder's practice is competent.

(6) The supervisor shall contact the board liaison with any concern or problem with the disciplined credential holder, his or her practice, or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder, and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14. [~~Graduate Students in Programs Emphasizing Substance Use Disorders Counseling. Graduate-level students in programs that emphasize alcohol and drug counseling who are providing services in health care settings that provide alcohol and drug counseling including independent practice settings shall:~~

(1) ~~Be supervised by a licensed clinical alcohol and drug counselor or certified alcohol and drug counselor;~~

(2) ~~Be registered for practicum credit on the transcript in his or her course of study;~~

(3) ~~Clearly identify their status as unlicensed trainees in the field of alcohol and drug counseling to all clients and payors;~~

(4) ~~Give to all clients and payors the name of the supervising licensed clinical alcohol and drug counselor or certified alcohol and drug counselor responsible for the student's work; and~~

(5) ~~Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a certificate or license from the board.~~

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KBADC Form 3, Supervisory Agreement", March 2021[~~June 2015~~];

(b) "KBADC Form 4, Request[~~ReOquest~~] to Provide Supervision", March 2021[~~June 2015~~];

(c) "KBADC Form 6, Peer Support Specialist Supervisory Agreement", March 2021[~~June 2015~~];

(d) "KBADC Form 7, Supervision Evaluation", March 2021[~~June 2015~~];

(e) "KBADC Form 8, Peer Support Specialist Verification of Supervision", March 2021[~~June 2015~~];

(f) "KBADC Form 9, Supervision Evaluation for Peer Support Specialist", March 2021[~~September 2017~~];

(g) "KBADC Form 13, Verification of Clinical Supervision", March 2021[~~June 2015~~]; and

(h) "KBADC Form 14, Supervision Annual Report", March 2021[~~June 2015~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32[~~944 Leewood Drive~~], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 24, 2021 at 500 Mero Street, 127CW, Frankfort,

Kentucky 40601. In the event the building is not open to the public on May 24, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 24, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/88015845024?pwd=WnhsNmR3SGJwRXM0YktrM1psbkVxZz09>, Password: 203666, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to obtain supervision for registration, certification, and licensure.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure to obtain supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.

(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 change the existing administrative regulation by: (1) removing the 300-hour requirement for supervision for clinical supervision; (2) deleting the twelve (12) core functions; (3) replacing the twelve (12) core functions with the four (4) domains; (4) clarifying how much supervision is needed based on high level of education obtained; (5) stating that supervision that exceeds two (2) hours in a single day shall be accompanied by a written explanation justifying the length of supervision; (6) clarifying that only applicants who currently possession a certification as a certified alcohol and drug counselor can apply supervision received prior to February 5, 2016 to the required hours of supervision; (7) updating the requirements to become a supervisor to conform with KRS 309.083(3) (effective March 1, 2021), 309.0831(3) (effective March 1, 2021), 309.0842 (effective March 1, 2021), and 309.085 (effective March 1, 2021); (8) increasing the number of supervisees a supervisor may have from twelve (12) to twenty-five (25); (9) requiring that a supervisee's supervisor receive a copy of any complaint filed against a supervisee; (10) adding requirements to the supervision forms; (11) adding the two new credential to the list of those who need supervision; (12) deleting language regarding billing from Section 12; (13) deleting language dealing with

graduate students as outside the scope of the board's authority; (14) updating the board's address; and (15) adding the board's Web site address.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to expand since new credentials have been established in the last legislative session and provide the board with more oversight of the supervision process of an applicant or licensee.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: In order to comply with this regulation, supervisees will have to obtain a supervisor and record their hours of supervision. Supervisors will have to apply with the board to become a supervisor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: In complying with this administrative regulation, some applicants will have to attend training to become a supervisor, this may incur a cost. Most supervisees have to pay their supervisor for supervision.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, the credential holders and applicants will be able to document the supervision received and provide the board with more oversight during the supervision process.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the

basis of any factor.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (3), (5), 309.083, 309.0831, 309.0832, 309.0833, 309.0841, 309.0842.

(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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Amendment)

201 KAR 35:075. Substitution for work experience for an applicant for certification as an alcohol and drug counselor.

RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833
STATUTORY AUTHORITY: KRS 309.0813(1), (3), (5), 309.083, 309.0831, 309.0832, 309.0833

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) authorizes the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.083, 309.0831, 309.0832, [and] 309.0833, 309.0841, and 309.0842 establish the standards for the accumulation of the required supervised work experience. This administrative regulation establishes the requirements for substituting education for work experience requirements for an applicant for certification as an alcohol and drug counselor.

Section 1. Substitution for Work Experience for an Applicant for Certification as an Alcohol and Drug Counselor under KRS 309.083. (1) An applicant may substitute, for part of the work experience, a degree in a related field such as:

- (a) Addictions;
- (b) Counseling;
- (c) Psychology;
- (d) Psychiatric nursing; or
- (e) Social work.

(2) An applicant may request to substitute an educational degree for part of the required work experience by submitting

KBADC Form 12, Workplace Experience Substitution Request, to the board along with transcripts from an accredited college or university.

(3) Educational substitution shall be reviewed and approved by the board based upon education relative to the delivery of alcohol and other drug counseling.

(a) A master's degree or higher in a related field, with a specialization in addictions or drug and alcohol counseling, may be substituted for 4,000 hours of work experience.

(b) A master's degree or higher in a related field, without the specialization in paragraph (a) of this subsection, may be substituted for 3,000 hours of work experience.

(c) A bachelor's degree in a related field may be substituted for 2,000 hours of work experience.

(d) A bachelor's degree in an unrelated field shall not qualify for a substitution of hours, and the applicant shall provide proof of 6,000 hours of work experience as established in KRS 309.083(3).

(4) The hours of work experience shall be documented on the candidate's application for certification and shall contain verification by the supervisor.

Section 2. Incorporation by Reference. (1) "KBADC Form 12, Workplace Experience Substitution Request", March 2021 ~~June 2015~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St. 2 SC 321911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 24, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 24, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 24, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/88015845024?pwd=WnhsNmR3SGJwRXM0YktrM1psbkVxZz09>, Password: 203666, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes what is considered qualified the work experience that may be substituted for actual alcohol and drug counseling work experience required to be credentialed by

the board.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the work experience required to be credentialed by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for work experience required to be credentialed by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist an applicant and board to understand the work experience required to be credentialed by the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by clarifying that this regulation only applies to applicants for certification as a certified alcohol and drug counselor under KRS 309.083 and no other certificate holders.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify that new credentials created last legislative session do not fall under this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute because the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for work experience required to be credentialed by the board.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by clearly identifying who can substitute work experience.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: Certified alcohol and drug counselors who want to substitute work place experience will fill out the proper form and submit it to the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no new cost associated to the amendment related to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: A credential holder has knowledge of the required work experience as set out in the statute for each credential.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (3), (5). 309.083, 309.0831, 309.0832, and 309.0833.

(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 administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Amendment)

201 KAR 35:080. Voluntary inactive and retired status.

RELATES TO: KRS 309.0813(5) and (12)

STATUTORY AUTHORITY: KRS 309.0813(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(5) requires the board to promulgate administrative regulations to define the process to register with the board as a registered alcohol and drug peer support specialist, certified alcohol and drug counselor associate I, certified alcohol and drug counselor associate II, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor. KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. This administrative regulation allows credential holders to place their

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credentials in voluntary inactive status or retired for a period of time if they do not intend to actively practice alcohol and drug counseling or alcohol and drug peer support services in the Commonwealth of Kentucky

Section 1. Conditions for Application for Voluntary Inactive Status. (1) Voluntary inactive status shall be for the credential holder who is currently not working as a peer support specialist or an alcohol and drug counselor, yet plans to return to providing peer support services or alcohol and drug counseling.

(2) The Kentucky Board of Alcohol and Drug Counselors shall grant inactive status if one (1) or more of the following conditions apply:

- (a) Medical problems;
- (b) Maternity or paternity;
- (c) Education;
- (d) Military service; or
- (e) Family or personal issues.

Section 2. Instructions for Application for Voluntary Inactive Status. (1) A credential holder, including a temporary credential holder, desiring inactive status shall send a letter of request to the office of the Kentucky Board of Alcohol and Drug Counselors and include the following information:

- (a) Current home address and telephone number;
- (b) Reason for request;
- (c) Final date of employment providing peer support services or~~[in the]~~ alcohol and drug counseling ~~[field]~~;
- (d) Final date of supervision;
- (e) Anticipated date of return to employment providing peer support services or~~[in the]~~ alcohol and drug counseling~~[field]~~; and
- (e) Nonrefundable enrollment fee of fifty (50) dollars as established in 201 KAR 35:020, Section 7.

(2) The request for voluntary inactive status shall be placed on the agenda of the next regularly-scheduled meeting of the Kentucky Board of Alcohol and Drug Counselors for consideration.

(3) The applicant shall be notified of the board's decision no later than two (2) weeks after the board's meeting.

Section 3. Terms and Responsibilities. (1) While on voluntary inactive status, an individual shall continue to receive bulletins, newsletters, and other communications from the Kentucky Board of Alcohol and Drug Counselors.

(2) A counselor on voluntary inactive status shall not practice or use the title or initials of a counselor such as, TCADC, Associate I, Associate II, CADC, LCADCA, or LCADC.

(3) A peer support specialist on voluntary inactive status shall not practice or use the initials or title of a registered peer support specialist such as, TRADPSS or RADPSS[RPSS].

(4) Individuals on voluntary inactive status shall not be eligible for reciprocity.

(5) Individuals on voluntary inactive status shall comply with the Kentucky Code of Ethics as established in 201 KAR 35:030.

(6) The voluntarily inactive individual shall notify the Kentucky Board of Alcohol and Drug Counselors prior to returning to work providing peer support services or~~[in the]~~ alcohol and drug counseling ~~[field]~~ and pay the reactivation fee established in 201 KAR 35:020, Section 7.

(7) Failure to notify the board prior to returning to employment shall constitute a violation of the Kentucky Board of Alcohol and Drug Counselors Code of Ethics in 201 KAR 35:030, and shall result in referral to the board for investigation, in accordance with the procedures outlined in 201 KAR Chapter 35.

(8) A credential holder may remain on inactive status for two (2) years, unless an extension of time is granted.

(9) The two (2) year period of inactive status shall begin when the board grants the request for inactive status.

(10) A credential holder may request one (1) extension of time of two (2) years by submitting to the board a written request to continue on inactive status and an explanation of the reason for the request.

(11) If the credential holder does not submit a request for extension of the inactive status or fails to reactivate the credential

before the end of the inactive status, the credential shall expire.

Section 4. Reactivation. (1) Individuals requesting reactivation of their registration, certification, or licensure status shall send a letter of request to the office of the Kentucky Board of Alcohol and Drug Counselors and shall include the following:

- (a) Current home address;
- (b) Current e-mail address;
- (c) Description of change of circumstances allowing active participation in the field;
- (d) Address of employing agency, if applicable;
- (e) Submission of proof of attendance of continuing education as required by 201 KAR 35:040; and
- (f) Nonrefundable reactivation fee as established in 201 KAR 35:020, Section 7(3).

(2)(a) A request for reactivation shall be considered at the next regularly scheduled meeting of the Kentucky Board of Alcohol and Drug Counselors.

(b) The applicant shall be notified within two (2) weeks of the board's decision.

Section 5. Conditions for Retired Status. (1) Except for an individual issued a temporary registration or certification, a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, or a license as a clinical alcohol and drug counselor associate, retired status may be granted to a credential holder upon written request to the board.

(2) The board may grant retired status to a credential holder submitting a written request if that individual:

(a) Suffers~~[is at least sixty-five (65) years old, or suffers]~~ a physical or mental~~[medical]~~ disability or illness that renders the credential holder unable to provide peer support services or practice alcohol and drug counseling; or~~[and]~~

(b) Has retired from providing peer support services or the practice of alcohol and drug counseling in all jurisdictions and is not conducting an active practice in any jurisdiction.

(3) A credential holder granted retired status by the board shall:

(a) Not be required to meet the continuing education requirements under 201 KAR 35:030;

(b) Be relieved of the obligation to pay the renewal and penalty fees under 201 KAR 35:020, Section 4 and the inactive status fees under 201 KAR 35:020, Section 7; and

(c) Use the designation "-R" at the end of the acronym for the appropriate credential such as, RADPSS-R~~[RPSS-R]~~, CADC-R, or LCADC-R.

(4) A credential holder who retires and later seeks reinstatement shall meet applicable current initial registration, certification, or licensure requirements as provided in KRS 309.083 through 309.0833, 201 KAR 35:025, 35:050, and 35:070.

TIM CESARIO, Chair

APPROVED BY AGENCY: February 25, 2021

FILED WITH LRC: March 5, 2021 at 4:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 24, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the building is not open to the public on May 24, 2021, including if the declared State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 24, 2021, this hearing will be held by video teleconference, in which event members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/88015845024?pwd=WnhsNmR3SGJwRXM0YktrM1psbkVxZz09>, Password: 203666, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 995892. 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 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for a credential holder who voluntarily places oneself on inactive or retired status.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish procedure for the board to be aware of the credential holders who voluntarily places oneself on inactive or retired status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations to register with the board as a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in board having knowledge of credential holders who are not currently practicing.

(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 change the existing administrative regulation by: (1) allowing temporary credential holders to place their credential on inactive status; (2) requiring peer support specialist who place their credential on voluntary inactive status to state their final date of supervision; (3) add the enrollment fee of fifty (50) dollars to the text of the regulation; (4) notify credential holders that they cannot use their title or an acronym if they are in inactive status; (5) clarifying that registered alcohol and drug support specialist only provide peer support services; (6) setting a time limit of two (2) years to remain on inactive status; (7) establishing that the two (2) year period begins when the board grants the request; (8) allowing a credential holder to request an extension of inactive status; (9) explaining that a credential will expire if a request for extension is not timely filed; (10) allowing credential created last legislative session to apply for retired status; (11) removing the age requirement for retired status; and (12) correcting the RADPSS acronym.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow credentials created last legislative session to go on inactive or retired status.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute as the authorizing statute gives the board the ability to promulgate regulations to register with the board as a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing credential holders the ability to go on inactive or retired status and allow the board to track who is not practicing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and

drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: Credential holders desiring to go on inactive or retired status must notify the board. A credential holder must notify the board prior to returning to the practice of alcohol and drug counseling or peer support.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Credential holders pay a fifty (50) dollar fee to go on inactive status.

(c) As a result of compliance, what benefits will accrue to the entities: The credential holders have the liberty to place oneself on inactive status and return to work when desired with approval of the board.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a fee of fifty (50) dollars to go on inactive status.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1) and (5)

(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? The board is unable to determine how much, if any, revenue this administrative regulation will generate for state or local government for the first year. The amendments to this administrative regulation establish a fee of fifty (50) dollars to go on inactive status.

(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 board is unable to determine how much, if any,

revenue this administrative regulation will generate for state or local government for subsequent years. The amendments to this administrative regulation establish a fee of fifty (50) dollars to go on inactive status.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost 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 (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 39:060. General requirements.

RELATES TO: KRS 61.870, 61.884, 224.1-400, 224.10, 224.40-310, 224.46, 224.99, 40 C.F.R. Parts 124, 260, 261, 268, 270, 42 U.S.C. 2011 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.46-505, 224.46-510(3), 224.46-520, 224.50-130, 224.50-135

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) and 224.50-130 require the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of human health and the environment. KRS 224.46-520 requires that persons engaging in the treatment, storage, disposal, and recycling of hazardous waste obtain a permit, and to establish standards for these permits, to require adequate financial responsibility, and to establish minimum standards for closure for all facilities, and the post-closure monitoring and maintenance of hazardous waste disposal facilities. This administrative regulation establishes the general requirements for hazardous waste management systems.

Section 1. Applicability. This administrative regulation shall apply to a person, state, or federal agency that engages in the generation, treatment, storage, disposal, transportation, or management of waste defined or identified as hazardous in KRS Chapter 224 or 401 KAR Chapter 39, including hazardous substances spilled into the environment that meet the criteria of hazardous waste.

Section 2. Hazardous Waste Management System. (1) Except as established in subsections (2) through (6) of this section and Section 6 of this administrative regulation, the requirements for hazardous waste management systems shall be as established in 40 C.F.R. Part 260, except:

- (a) 40 C.F.R. 260.34(a)(1) to (3);
- (b) 260.10; and

(c) The last sentence of 40 C.F.R. 260.34(a).

(2) The public notice requirements established in 40 C.F.R. 260.20(c) shall be replaced with the requirements established in paragraphs (a) and (b) of this subsection. If the tentative decision is to:

(a) Deny the petition, the cabinet shall notify the petitioner in writing and notify the public as required by subsection (3)(b) of this section; or

(b) Grant the petition, the cabinet shall propose a regulatory amendment, and file the proposed amendment with the Legislative Research Commission pursuant to KRS Chapter 13A, including the rule making and public comment process contained therein.

(3) The final decision making procedure established in 40 C.F.R., 260.20(e) shall be replaced with procedures established in paragraphs (a) and (b) of this subsection.

(a) The cabinet shall make a final decision after evaluating all public comments.

(b) The final decision shall be published either in the Kentucky Administrative Register, a daily or weekly major local newspaper of general circulation, or other methods reasonably calculated to give actual notice of the action to the persons potentially affected by it.

(4) A check made payable to the Kentucky State Treasurer in the amount required by KRS 224.46-014 shall be submitted to the cabinet with the submission of a completed petition for each hazardous waste that is petitioned for delisting.

(5) Upon approval by the cabinet of a petition to exclude a waste from a particular facility in accordance with 401 KAR Chapter 39, the excluded waste shall be subject to the disposal requirements established in 401 KAR Chapter 47 and the conditions as specified in the approved exclusion.

(6) A variance shall be a written waiver from a requirement of 401 KAR Chapters 39 and 40, upon the finding by the cabinet that the absence of the provision shall provide adequate protection to human health and the environment consistent with KRS Chapter 224.

(a)1. A request for variance from a requirement of 401 KAR Chapters 39 and 40 shall be submitted in a report in sufficient detail to provide to the cabinet the analyses, procedures, controls, and other pertinent data necessary to support the request for variance.

2. The granting of a request by the cabinet shall be in writing and shall specify appropriate conditions, including duration, limitations, and review procedures to provide adequate protection to human health and the environment.

(b) The cabinet shall grant a variance or permit modification from the requirements of 401 KAR Chapters 39 and 40 if a waste permit requirement, or the process and equipment used, is determined by the cabinet to be:

1. Insignificant as a potential hazard to human health or the environment because of its small quantity, low concentration, physical, biological, or chemical characteristics, or method of operation used; or

2. Handled, processed, or disposed of pursuant to administrative regulations of another governmental agency, if the administrative regulations of other agencies comply with the requirements of the waste management administrative regulations, including federal exemption rule-making actions pertaining to hazardous waste management.

(c) The cabinet shall not grant any request for a variance that shall:

1. Make the hazardous waste program less stringent than the federal hazardous waste management program;

2. Conflict with Kentucky Revised Statutes;

3. Conflict with a regulatory provision stating that no variance shall be granted; or

4. Vary the financial responsibility requirements in a manner conflicting with 401 KAR 39:090 or Section 3 of this administrative regulation.

Section 3. Identification and Listing of Hazardous Waste. (1) Except as established in subsections (2) through (8) of this section and Section 6 of this administrative regulation, the requirements for identification and listing of hazardous waste shall be as established in 40 C.F.R. Part 261, except:

(a) 40 C.F.R. 261.4(b)(17);

(b) 40 C.F.R. 261.149; and

(c) 40 C.F.R. 261.150.

(2) Wastes shall be considered radioactive mixed wastes if the wastes contain both hazardous wastes subject to KRS Chapter 224 and radioactive wastes subject to the Atomic Energy Act, 42 U.S.C. 2011 et. seq. Unless specifically exempted by 401 KAR 39:090, Section 3, radioactive mixed wastes shall be subject to the requirements of 401 KAR Chapters 39 and 40.

(3) Facilities required to comply with the export notification requirements referenced in 40 C.F.R. 261.39(a)(5) and 40 C.F.R.

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261.41, shall also notify the cabinet.

(4) In addition to those substances listed in 40 C.F.R. 261, Subpart D, substances identified in Table I shall be listed hazardous wastes in the Commonwealth of Kentucky.

Table I	
Ky. Hazardous Waste No.	Substance
N001	GB (isopropyl methyl phosphonofluoridate) and related compounds (H)
N002	VX (0-ethyl-S-(2-diisopropyl-aminoethyl)-methyl phosphonothiolate) and related compounds (H)
N003	H (bis (2-chloroethyl) sulfide) and related compounds (H)
N101	Untamminated M67 Rocket Motor Assembly, Propellant Component of the Rocket Motor, Shipping Firing Tubes, and End-Caps associated with GB munitions
N102	Untamminated M67 Rocket Motor Assembly, Propellant Component of the Rocket Motor, Shipping Firing Tubes, and End-Caps associated with VX munitions
N201	<u>Metal Parts Treater Residue or Static Detonation Chamber Residues and Ash, and Post Thermal Oxidizer Solids and Sludges</u> associated with GB munitions or related wastes
N202	<u>Metal Parts Treater Residue or Static Detonation Chamber Residues and Ash, and Post Thermal Oxidizer Solids and Sludges</u> associated with VX munitions or related wastes
N203	<u>Static Detonation Chamber Residue and Ash, and Post Thermal Oxidizer Solids and Sludges</u> associated with H munitions
N301	Agent Hydrolysate associated with GB munitions
N302	Agent Hydrolysate associated with VX munitions
N401	Energetic Hydrolysate associated with GB munitions
N402	Energetic Hydrolysate associated with VX munitions
N501	Aluminum Precipitate associated with treated GB wastes
N502	Aluminum Precipitate associated with treated VX wastes
N601	Reverse Osmosis Reject or Supercritical Water Oxidation Effluent associated with treated GB wastes
N602	Reverse Osmosis Reject or Supercritical Water Oxidation Effluent associated with treated VX wastes
N701	Lab Wastes associated with treated GB wastes and GB-containing lab wastes treated to destroy agent with caustic
N702	Lab Wastes associated with treated VX wastes and VX-containing lab wastes treated to destroy agent with caustic
N703	Lab Wastes associated with treated H wastes and H-containing lab wastes treated to destroy agent with caustic
N801	<u>Off-gas Treatment (OTM) condensate associated with treated GB wastes, Off-gas Treatment System liquids including Quench Fluid, Scrubber Fluids, Electrostatic Precipitator Fluids, Process Fluid Bleed Water, Post-Thermal Oxidizer Condensates and related wastes associated with Static Detonation Chamber treatment of GB munitions</u>
N802	<u>Off-gas Treatment (OTM) condensate associated with treated VX wastes, Off-gas Treatment System liquids including Quench Fluid, Scrubber Fluids, Electrostatic Precipitator Fluids, Process Fluid Bleed Water, Post-Thermal Oxidizer Condensates and related wastes associated with Static Detonation Chamber treatment of VX munitions</u>

N803	<u>Off-gas Treatment System liquids including Quench Fluid, Scrubber Fluids, Post-Thermal Oxidizer Condensates and related wastes associated with Static Detonation Chamber treatment of H munitions</u>
N901	Spent Decontamination Solution associated with treated GB wastes
N902	Spent Decontamination Solution associated with treated VX wastes
N903	<u>Spent Decontamination Solution associated with treated H wastes</u>
N1001	<u>GB contaminated waste equipment, tools, and construction materials that have been decontaminated in accordance with United States Army Guidelines and have been determined to be safe for storage or transport, and approved by the Cabinet as no longer acutely hazardous</u>
N1002	<u>VX contaminated waste equipment, tools, and construction materials that have been decontaminated in accordance with United States Army Guidelines and have been determined to be safe for storage or transport, and approved by the Cabinet as no longer acutely hazardous</u>
N1003	<u>H contaminated waste equipment, tools, and construction materials that have been decontaminated in accordance with United States Army Guidelines and have been determined to be safe for storage or transport, and approved by the Cabinet as no longer acutely hazardous</u>

(5) In addition to the agricultural wastes established in 40 C.F.R. 261.4(b)(2), prunings and crop residues shall be agricultural wastes.

(6) In addition to the copy of the written state agreement required in 40 C.F.R. 261.4(b)(11)(ii) being submitted to the U.S. EPA, a copy shall be submitted to the cabinet at the same time.

(7) If multiple facilities are covered by the same financial assurance mechanism as referenced in 40 C.F.R. 261.143(g), 40 C.F.R. 261.147(a)(1)(i), and 40 C.F.R. 261.147(b)(1)(i), evidence of financial assurance shall be submitted to the cabinet and, as applicable, to the Regional Administrator and other state directors.

(8) In addition to the excluded hazardous wastes in 40 C.F.R. Part 261, Appendix IX, the cabinet granted an exclusion for the multi-source landfill leachate (EPA Hazardous Waste F039) generated after February 2, 2017, at Ashland Route 3 Landfill, Kentucky 3, Catlettsburg, Kentucky. This subsection shall serve as publication of the exclusion in accordance with Section 2(3)(b) of this administrative regulation.

(9) Any special waste identified as a hazardous waste as established in this administrative regulation shall be:

(a) Regulated pursuant to 401 KAR Chapter 39; and

(b) Exempt from the assessment of the Kentucky hazardous waste management fund as established in KRS 224.46-580(7).

Section 4. Land Disposal Restrictions. Except as established in Section 6 of this administrative regulation, the requirements for land disposal restrictions shall be as established in 40 C.F.R. Part 268.

Section 5. Hazardous Waste Permit Programs and Procedures. (1) Except as established in subsections (2) through (18) of this section and Section 6 of this administrative regulation, the requirements for hazardous waste permit programs and procedures shall be as established in 40 C.F.R. Parts 124 and 270, except:

(a) 40 C.F.R. 270.1(c)(2)(ix);

(b) 40 C.F.R. 270.14(b)(18); and

(c) 40 C.F.R. 124, Subparts C and D.

(2) In addition to public notice requirements of 40 C.F.R. 124, the statement contained in KRS 224.40-310(5)(e) shall be included in each public notice.

(3) The applicant or facility shall reimburse the cabinet for the costs of newspaper advertisements, duplication, and postage for any required public notice or distribution to a mailing list.

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(4) In addition to the requirements of 40 C.F.R. 124.10(a)(1)(iii), public notice shall be given if a hearing has been granted pursuant to 401 KAR Chapters 4 and 5 or 805 KAR Chapter 1.

(5) In addition to the federal appeal procedures referenced in 40 C.F.R. Parts 124 and 270, the cabinet appeal procedures shall be as established in KRS 224.10-420 through 224.10-470 and 400 KAR Chapter 1 for cabinet issued permits.

(6)(a) Any owner or operator required to obtain a permit shall complete and submit to the cabinet:

1. EPA form 8700-23 as referenced in 40 C.F.R. 270.13; and
2. Part A Application Addendum, DWM 7058A.

(b) If any of the information required by paragraph (a) of this subsection changes, the owner or operator shall submit revised forms, established in paragraph (a) of this subsection, to the cabinet within sixty (60) days of the change, except as established in 401 KAR 39:080, Section 5(4).

(7) In addition to the noncompliance reporting requirements referenced in 40 C.F.R. 270.30(l)(6), the permittee shall immediately notify the cabinet of a release as established in KRS 224.1-400.

(8) In addition to the requirements established in 40 C.F.R. 270.10, any person applying for a construction and operation permit shall submit the information and documentation required in KRS 224.46-520(1) to include documentation of the applicant's decisions with respect to the proposal and justification for actions taken.

(9) In addition to the requirements of 40 C.F.R. Parts 124 and 270, for a hazardous waste disposal site or facility, that meets the criteria established in paragraph (a) of this subsection, a permit shall not be approved or issued by the cabinet, or a permit-by-rule applied, prior to the determinations established in KRS 224.40-310(6).

(a) This subsection shall apply to an owner or operator of:

1. A hazardous waste disposal site or facility that meets the definition of a waste disposal facility as defined by KRS 224.40-310(1); and

2.a. A new or proposed hazardous waste landfill, incinerator, or other site or facility for the land disposal of hazardous waste;

b. An existing hazardous waste landfill, incinerator, or other site or facility for the land disposal of hazardous waste that requests a permit modification that does not meet the criteria of a Class 1 or 2 modification; or

c. A new or existing hazardous waste treatment facility or hazardous waste storage facility that requests a permit modification to include a disposal facility instead of or in addition to any permitted hazardous waste activity already conducted by the owner or operator.

(b) The applicant shall obtain local government approval for incinerators or land disposal facilities, as established in KRS 224.40-310(7).

(10) An emergency permit shall specify that:

(a) All remaining hazardous waste and residues shall be removed at the end of the term of the emergency permit to a properly permitted hazardous waste site or facility in order to be exempted from the financial requirements of 401 KAR 39:090;

(b) The permittee shall comply with the closure performance standards established in 401 KAR 39:090, Section 8; and

(c) The cabinet shall recover its actual and necessary costs associated with the permittee's failure to properly close the unit specified in the emergency permit.

(11) Upon collection of trial burn data, referenced in 40 C.F.R. 270.62(b)(9), the data shall become part of the Part B permit application.

(12)(a) In accordance with 401 KAR 39:090, the applicant shall establish financial assurance prior to issuance of a permit or sixty (60) days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(b) The amount of financial assurance established for closure or post-closure shall be in accordance with the plan prepared pursuant to 401 KAR 39:090.

(c) The owner or operator of the hazardous waste site or facility shall submit a demonstration of financial assurance as

established in KRS 224.46-520(3) and 401 KAR 39:090.

(13) An owner or operator of existing hazardous waste sites or facilities that close under interim status without submitting Part B of the permit application shall, at a minimum, comply with the corrective action requirements established in 401 KAR 39:090, Section 1.

(14) In addition to the requirements in 40 C.F.R. 270.10 and KRS 224.40-330, any initial, renewal, or change to ownership permit application shall include the following background information and past compliance record:

(a) Organizational structure:

1. If the applicant is a sole proprietor, a detailed listing of any general or limited partnership, joint venture, or corporation in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise;

2. If the applicant is a general or limited partnership, a detailed listing of:

a. Each of the partners and their respective interests, whether ownership or otherwise;

b. Any corporation, joint venture, limited liability corporation, general or limited partnership, or proprietorship in which any of the constituent partners of the applicant holds as much as or more than a twenty-five (25) percent interest whether ownership or otherwise; and

c. Any corporation, joint venture, proprietorship, limited liability corporation, or general or limited partnership that holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise in any of the non-individual constituent partners comprising the applicant;

3. If the applicant is a corporation, a detailed listing of:

a. The officers, directors, and major stockholders holding as much or more than a twenty-five (25) percent interest;

b. Any corporation of which the applicant is either a subsidiary or which holds as much as or more than a twenty-five (25) percent interest, either in stock or assets, in the applicant;

c. Any corporations that are either subsidiaries of the applicant or in which the applicant holds as much as or more than a twenty-five (25) percent interest, either in stock or assets; and

d. Any proprietorship, general or limited partnership, or joint venture in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise; or

4. If the applicant is a joint venture, a detailed listing of:

a. All other joint ventures, and the respective interests, whether ownership or otherwise of each; and

b. Any proprietorship, general or limited partnership, joint venture, or corporation in which the applicant holds as much as or more than a twenty-five (25) percent interest, whether ownership or otherwise;

(b) For each individual or other entity listed in paragraph (a) of this subsection, a detailed listing of all violations of federal or state laws, rules, or administrative regulations concerning the areas established in subparagraphs 1. through 5. of this paragraph, whether judicial or administrative proceedings are pending or completed, that have resulted or might result in either criminal convictions or civil or administrative fines as much as or more than \$1,000:

1. Solid or hazardous waste management;

2. Air pollution;

3. Water;

4. Occupational Safety and Health Administration with respect to hazardous materials or hazardous substances; or

5. Transportation with respect to hazardous materials or hazardous substances; and

(c) For each individual or other entity listed in paragraph (a) of this subsection, a current financial statement prepared by a certified public accountant.

(15) The owner or operator of the hazardous waste site or facility shall complete and submit an evaluation of subsurface geologic formations and surface topography for solution or karst terrain.

(a) If the owner or operator demonstrates to the cabinet that the facility is not underlain by soluble limestone, the owner or

operator shall be exempt from the requirements of this subsection.

(b) Except as established in paragraph (a) of this subsection, the owner or operator shall demonstrate that:

1. The facility has been designed to withstand any gradual or sudden land subsidence, which is characteristic of areas underlain by soluble limestone; and

2. Contamination into or through any fractures, channels, or solution features shall not occur.

(c) Except as established in paragraph (a) of this subsection, the owner or operator shall:

1.a. Establish the presence and extent of all fractures, channels, and solution features in the bedrock beneath the facility and describe how these features shall be sealed, filled, isolated, or otherwise neutralized to prevent subsidence; and

b. Describe how solution features shall be monitored to demonstrate compliance with the criteria established in paragraph (b) of this subsection; or

2.a. Design, operate, and maintain a double-liner system, which shall be installed beneath the facility and that shall include a leak detection system that meets the criteria established in paragraph (b) of this subsection; and

b. Comply with all of the requirements of 401 KAR 39:090, Section 1, for the design of the double-lined facility as applicable.

(16) The owner or operator of the hazardous waste site or facility shall submit the actual test data demonstrating the liner is or will be compatible with the waste, if applicable.

(17)(a) The applicability established in 40 C.F.R. 124.31(a) shall be replaced with this paragraph.

1. The requirements in 40 C.F.R. 124.31 shall apply to all RCRA part B applications seeking:

a. An initial permit for a hazardous waste management unit;

b. A renewal of a permit for a unit with a significant change in facility operations;

c. A RCRA standardized permit as referenced in 40 C.F.R. 270, Subpart J; or

d. A renewal of a standardized permit for a unit with a significant change in facility operations, as defined by 40 C.F.R. 124.211(c).

2. The requirements in 40 C.F.R. 124.31 shall not apply to permit modifications pursuant to 40 C.F.R. 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) The applicability established in 40 C.F.R. 124.32(a) shall be replaced with this paragraph.

1. The requirements in 40 C.F.R. 124.32 shall apply to RCRA part B applications seeking:

a. An initial permit for a hazardous waste management unit; or

b. A renewal of a permit for a unit pursuant to 40 C.F.R. 270.51.

2. The requirements in 40 C.F.R. 124.32 shall not apply to a hazardous waste unit for which a facility owner or operator is seeking:

a. A RCRA standardized permit referenced in 40 C.F.R. part 270, subpart J;

b. A permit modification pursuant to 40 C.F.R. 270.42; or

c. A permit application submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(c) The applicability established in 40 C.F.R. 124.33(a) shall be replaced with this paragraph. The requirements in 40 C.F.R. 124.33 shall apply to applicants seeking RCRA permits for hazardous waste management units.

(18) The biennial reporting referenced in 40 C.F.R. 270.60(a)(3)(v) shall be replaced with annual reporting.

Section 6. Exceptions and Additions. (1) In the event of a release or threatened release of a hazardous substance, pollutant, or contaminant to the environment in a quantity that might present an imminent or substantial danger to human health or the environment, the facility authorized representative shall:

(a) Immediately notify the cabinet's twenty-four (24) hour emergency response line as required by KRS 224.1-400; and

(b) Provide a written report of the incident or accident within seven (7) days of the release, if required by the cabinet pursuant to KRS 224.1-400.

(2) Dates included in the federal regulations referenced in 401 KAR Chapter 39 that occurred before the effective date of this administrative regulation shall not be construed as creating a retroactive right or obligation in accordance with 401 KAR Chapter 39 if that right or obligation did not exist in this administrative regulation prior to the date the federal regulations were referenced.

(3) If a right or obligation existed in accordance with federal regulations based on a date in federal regulations, and there is a period from the date cited in the text until the date the requirements initially became effective in 401 KAR Chapter 39, these administrative regulations shall not contravene or countermand the legal application of the federal regulation for that period.

(4)(a) For initial issuance, modification, revocation and reissuance, or termination, of a permit, the applicable administrative regulations shall be those regulatory provisions that are in effect upon the date that the cabinet makes a final determination upon the permit action and are applicable to those specific permit conditions being modified or revoked and reissued.

(b) The procedures that shall be used for permit modification, revocation and reissuance, or termination shall be those regulatory procedures that are in effect upon the date of the cabinet's final determination.

(5) In addition to RCRA, Section 7003 KRS 224.10-410 shall apply.

(6) In addition to RCRA, Section 3008 KRS 224.10-420 through 224.10-470, 224.46-530, and 224.99-010 shall apply.

(7) In addition to RCRA, Section 3004 KRS 224.46-520, 401 KAR 39:090, and Section 4 of this administrative regulation shall apply.

(8)(a) As referenced in 401 KAR Chapter 39, the requirements in RCRA, Section 3010 shall be replaced with the requirement that any person generating or transporting a substance, or owning or operating a facility for treatment, storage, disposal, or recycling of the substance, shall register with the cabinet after promulgation of an administrative regulation identifying a substance by its characteristics or listing as hazardous waste subject to 401 KAR Chapter 39.

(b) The registration shall be filed as established in 401 KAR 39:080, Section 1(2) and within ninety (90) days after promulgation or revision of the administrative regulation unless another registration date is established in the administrative regulation.

(9) Any person who submits information to the cabinet pursuant to KAR Chapters 39 and 40, may assert a claim of business confidentiality or trade secret covering part or all of that information by following the procedures established in KRS 224.10-212 and 400 KAR 1:060.

(a) Information covered by a claim shall be disclosed by the cabinet as established in 400 KAR 1:060 and KRS Chapter 61, except that information required by 401 KAR 39:080, Section 1, which is submitted in notification of intent to export a hazardous waste, shall be provided to the U.S. Department of State, U.S. EPA, and the appropriate authorities in a receiving country regardless of any claims of confidentiality.

(b) If a claim does not accompany the information received by the cabinet, the claim may be made available to the public without further notice to the person submitting the claim.

(10) A person shall not deliver hazardous waste to a facility for treatment, storage, or disposal, unless the owner or operator has:

(a) Registered with the cabinet as an existing hazardous waste facility in operation on or before November 19, 1980;

(b) Qualified for interim status in accordance with 401 KAR 39:090, Section 2; or

(c) Been granted a hazardous waste site or facility permit by the cabinet.

(11) A person shall not engage in the storage, treatment, or disposal of hazardous waste without first obtaining construction or operation permits from the cabinet in accordance with KRS 224.46-520(1).

(12) Issuance of a federal permit to own or operate a hazardous waste site or facility shall not relieve the owner or

operator of the responsibility to comply with the requirements of 401 KAR Chapter 39.

(13) All permit forms or permit submissions to the cabinet shall include:

- (a) One (1) original and two (2) paper copies of the form;
- (b) One (1) electronic copy, which shall be an exact match to the original;
- (c) Up to seven (7) additional copies of the application, if requested by the cabinet for public review;
- (d) The Agency Interest (AI) number, if known; and
- (e) A signature of the authorized representative.

(14) In addition to 40 C.F.R. 270.43, the cabinet may terminate a permit during its term or deny a permit renewal application for a violation of any requirement of KRS Chapter 224 or 401 KAR Chapter 39.

(15) In addition to 40 C.F.R. 270.50, a permit for the nerve agents established in KRS 224.50-130 and Section 3 of this administrative regulation shall be reviewed by the cabinet five (5) years after the date of permit issuance or reissuance and shall be modified if necessary, as established in Section 5 of this administrative regulation.

(16) The permittee shall have paid the applicable fees due as established in KRS 224.46 and 401 KAR 39:120.

(17) Except for closure, post-closure, and corrective action permit applications, failure to submit a requested application on time, or to submit in full the information required by 401 KAR Chapter 39, shall result in denial of the application in accordance with this administrative regulation.

(18) Past performance of the owner or operator shall be considered in the review and in the determination of any requirement for specialized conditions pursuant to KRS 224.40-330.

(19) The provisions of 401 KAR Chapter 39 shall be compatible with and complementary to each other. If an administrative regulation is found to be contradictory, the more stringent provision shall apply.

(20) The citations to Sections 301, 307, and 402 of the Clean Water Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapter 5.

(21) The citations to Sections 60, 61, and 63 of the Clean Air Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 50 through 65.

(22) The citations to the Safe Drinking Water Act shall also include any applicable Kentucky requirements as established in 401 KAR Chapters 6, 8, 9, and 10, and 805 KAR Chapter 1.

(23) In addition to 40 C.F.R. 258 and Subtitle D, 401 KAR Chapters 45, 47, and 48 shall apply.

(24) In addition to RCRA, Subtitle C, KRS 224.46 shall apply.

(25) In addition to RCRA, Section 3008h, KRS 224.10-100(18), KRS 224.99-010(5), and KRS 224.46-530 shall apply.

Section 7. Incorporation by Reference. (1) "Part A Application Addendum", DWM 7058A, June 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: February 22, 2021

FILED WITH LRC: February 22, 2021 at 3:31 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A virtual public hearing on this administrative regulation shall be held on May 25, 2021, at 6:00PM, EST. The public hearing can be accessed at the following website address: **Error! Hyperlink reference not valid.** global.gotomeeting.com/join/430333789 or can be accessed by phone: (872) 240-3212 using access code: 430-333-789. Please note that registration is required to participate in or speak at this hearing. To register, you must either email your name and mailing address to heather.alexander@ky.gov or mail

this information to Heather Alexander, Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601. Be sure to include in the information if you plan to speak during the virtual hearing. Individuals interested in this hearing shall notify this agency in writing/email by five workdays prior to the hearing (no later than May 18, 2021) of their intent to attend and/or speak. If no notification of intent to speak at the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is submitted to the contact person listed below. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written/mailed comments shall be accepted through May 31, 2021. 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: Heather Alexander, 300 Sower Blvd., 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6303, fax (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the general requirements for hazardous waste management systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the general requirements for hazardous waste management systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Energy and Environment Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of human health and the environment. KRS 224.46-520 requires that persons engaging in the storage, treatment, disposal, and recycling of hazardous waste obtain a permit, to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.50-130(2) and (7) requires waste codes listings for Blue Grass Chemical Agent-Destruction Pilot Plant (BGCAPP). The BGCAPP chemical weapon wastes are not listed hazardous wastes under the federal Resource Conservation and Recovery Act program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for hazardous waste management systems as required by KRS 224.10-100, 224.46-510(3), 224.46-505, and 224.46-520 for the generation, treatment, storage, recycling, and disposal, standards for permits, financial assurance requirements, and closure and post-closure standards for hazardous wastes.

(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 revise and add additional waste codes as requested by the Blue Grass Army Depot for the treatment and disposal of nerve agent munitions. The basis for additional waste codes is due to several process changes at the BGCAPP facility over the course of the past 18 months, including the addition of the Rocket Warhead Containerization System in the main plant facility as well as the proposed modifications to the current SDC 1200 facility and addition of the SDC 2000 facility. These waste codes will facilitate more accurate management, shipment, and disposal of all waste streams that are expected to be created in the facilities. Amendments to waste codes N201 and N202 include non-liquid residues from the Static Detonation Chamber and Post Thermal Oxidizer processes. Amendments to

waste code N203 include non-liquid residues from the Post Thermal Oxidizer. Amendments to waste codes N801 and N802, and the addition of N803, include condensates associated with more detailed process listings in the Off-gas Treatment System. The addition of waste code N903 includes the decontamination solution for the mustard treated wastes, similar to the current waste codes N901 and N902 for the other types of munitions. Proposed waste codes N1001, N1002, and N1003 include wastes that have met treatment and decontamination standards and no longer will carry the acutely toxic hazard.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the general requirements for hazardous waste management systems. In particular, these waste codes will allow the facility, emergency response personnel, and disposal facilities to correctly identify and handle the generated hazardous waste.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Energy and Environment Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling, and disposal of hazardous wastes. KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. KRS 224.46-505 and 224.46-520 authorize the cabinet to control land disposal of hazardous waste to be protective of human health and the environment. KRS 224.46-520 requires that persons engaging in the storage, treatment, disposal, and recycling of hazardous waste obtain a permit, to establish standards for these permits, to require adequate financial responsibility, to establish minimum standards for closure for all facilities and the post-closure monitoring and maintenance of hazardous waste disposal facilities. KRS 224.50-130(2) and (7) requires waste codes listings for Blue Grass Chemical Agent-Destruction Pilot Plant (BGCAPP). The BGCAPP chemical weapon wastes are not listed hazardous wastes under the federal Resource Conservation and Recovery Act program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes requirements for hazardous waste management systems as required by KRS 224.10-100, 224.46-510(3), 224.46-505, 224.46-520, and 224.50-130 for the generation, treatment, storage, recycling, disposal, standards for permits, financial assurance requirements, and closure and post-closure standards for hazardous and chemical weapon wastes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of facilities that generate, transport, treat, store, and dispose of hazardous waste. There are approximately 16 treatment, storage, and disposal facilities, 384 large quantity generators, 412 small quantity generators, 2,853 very small quantity generators, and 132 transporters in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require a new registration and Part A for Bluegrass Army Depot.

(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 increase in cost for complying with this administrative regulation. There is a potential for a decrease in compliance costs if a previously considered acute hazardous waste is determined to be a non-acute hazardous waste under the new listed waste codes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to owners and operators include compliance with both the federal and state regulations, and in those cases where an acute hazardous waste is now determined to be hazardous under the new listed waste codes, an owner or operator would have decreased costs for

transport and disposal.

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

(a) Initially: This program is already in effect and costs \$2.9M to administer as a whole.

(b) On a continuing basis: \$2.9M, for this program, as a whole.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of restricted funds, general funds and grants from the federal Environmental Protection Agency. Funding for the Division of Waste Management's review of the applications related to BGCAPP is wholly provided through the Assembled Chemical Weapons Alternatives (ACWA) Cooperative Agreement, signed by the United States Army and Energy and Environment 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: There is no need for an increase in funding or fees to implement 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 or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation applies to all entities who generate, transport, store, or dispose of hazardous waste. To apply tiering to the regulation would unduly regulate some entities while not regulating others.

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 any units of state or local government that generate transport, store, or dispose of hazardous wastes as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.46-505, 224.46-510(3), 224.46-520, 224.50-130, 224.50-135 and 40 C.F.R. Parts 260, 261, 268, 270 and 124.

(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. This administrative regulation will not affect the expenditures and revenues of a state or local government agency as the hazardous waste program is already in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government as the hazardous waste program is already in effect. Currently the division receives \$1.3M in federal grant funding to administer this program, as a whole.

(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 additional revenue for state or local government as the hazardous waste program is already in effect. Currently the division receives \$1.3M in federal grant funding to administer this program, as a whole.

(c) How much will it cost to administer this program for the first year? This program is already in effect and costs \$2.9M to administer as a whole.

(d) How much will it cost to administer this program for subsequent years? \$2.9M, 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 (+/-): \$1.3M in federal grant funding, as a whole.
 Expenditures (+/-): \$2.9M, as a whole.
 Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. Parts 260, 261, 268, 270 and 124
2. State compliance standards. KRS 224.10-100, 224.46-505, 224.46-510(3), 224.46-520, 224.50-130, and 224.50-135.
3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Parts 260, 261, 268, 270 and 124.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose stricter, additional, or different requirements than those required by the federal regulation. 401 KAR 39:060, Section 3, requires cabinet notification for exports, identifies and lists hazardous wastes generated through demilitarization of chemical weapons in the stockpile at Blue Grass Army Depot in Richmond, Kentucky, and identifies additional substances as listed hazardous wastes. KRS 224.50-130(2) and (7) requires waste codes listings for Blue Grass Chemical Agent-Destruction Pilot Plant (BGCAPP). The BGCAPP chemical weapon wastes are not listed hazardous wastes under the federal Resource Conservation and Recovery Act program.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory requirements.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Amendment)

601 KAR 1:005. Safety administrative regulation.

RELATES TO: KRS 138.665, 174.400 - 174.425 [281.043], 281.600, 281.730, 281.750, 281.880, Chapter 281A, 49 C.F.R. Parts 40, 107, 130, 171 - 173, 175, 177, 178, 180, 350, 381 - 385, 390-397, 1572

STATUTORY AUTHORITY: KRS 174.410(2), 281.600, 281.730, 281.750, 281.880 - 281.888, 49 C.F.R. 40, Parts 130, 171 - 173, 175, 177, 178, 180, 382 - 384, 385, 390 - 397, 1572

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.410(2) [281.600] requires [authorizes] the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Energy and Environment Cabinet and the Secretary of the Cabinet for Health and Family Services, to adopt the Federal Hazardous Materials Transportation Regulations, 49 C.F.R. (1978), in order to effectively carry out the intent of KRS 174.400 through 174.425 relating to the transportation of hazardous materials by air or highway. KRS 174.410(3) requires the Transportation Cabinet and the Justice and Public Safety Cabinet to cooperate with and assist the Energy and Environment Cabinet in the implementation and enforcement of the transportation provisions of any state hazardous waste regulations promulgated pursuant to KRS Chapter 224. KRS 281.600 authorizes the Transportation Cabinet to promulgate administrative regulations relating to safety requirements for motor vehicles and the method of operation, including adoption of any federal motor carrier safety regulations. This administrative regulation establishes requirements for motor carriers operating in Kentucky. This administrative regulation establishes requirements related to exemptions from medical examination for private motor carriers of passengers that are more stringent than the requirements in 49 C.F.R. 391.68(c), which allows these carriers to avoid medical examination. Kentucky does not allow these medical waivers.

Section 1. Definitions.

(1) ["City bus" is defined in KRS 281.013(1)(b).

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(2)[(3)] "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier, is using a vehicle:

- (a)1. To transport agricultural products from his or her farm;
2. To transport farm machinery or farm supplies to his or her farm; or
3. Generally thought of as farm machinery; and

(b) That [Which] is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with this administrative regulation [601-KAR-1:025].

(3)[(4)] "Hazardous material" is defined in 49 C.F.R. 390.5. [Load limit] means the seating capacity established by the manufacturer for a passenger-carrying vehicle plus an additional twenty-five (25) percent.

(5) "Suburban bus" is defined in KRS 281.013(2)(b).

(6) "Utility" means an entity which provides water, electricity, natural gas, sewage disposal, telephone service, television cable, or community antenna service.].

Section 2. Governing Federal Regulations. A commercial motor vehicle and its operator meeting the definitions established [set forth] in 49 C.F.R. 390.5 operating for-hire or in private carriage, interstate, or intrastate, including commercial motor vehicles and its operators [except] as established [set forth] in Section 3 of this administrative regulation, shall be governed by the following Motor Carrier Safety Regulations and Transportation Security Administration Regulations adopted and issued by the United States Department of Transportation[.]:

- (1) 49 C.F.R. 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs;
- (2) 49 C.F.R. 382, Controlled Substances and Alcohol Use and Testing;
- (3) 49 C.F.R. 383, Commercial Driver's License Standards; Requirements and Penalties;
- (4) 49 C.F.R. 384, State Compliance with Commercial Driver's License Program;
- (5) 49 C.F.R. 385, Safety Fitness Procedures;
- (6) 49 C.F.R. 390, General;
- (7) 49 C.F.R. 391, Qualifications of Drivers;
- (8) 49 C.F.R. 392, Driving of Commercial Motor Vehicles;
- (9) 49 C.F.R. 393, Parts and Accessories Necessary for Safe Operation;
- (10) 49 C.F.R. 395, Hours of Service of Drivers;
- (11) 49 C.F.R. 396, Inspection, Repair and Maintenance;
- (12) 49 C.F.R. 397, Transportation of Hazardous Materials; Driving and Parking Rules; and
- (13) 49 C.F.R. 1572, Credentialing and Security Threat Assessments [~~Background Checks for Maritime and Land Transportation Security~~].

Section 3. The following hazardous materials transportation regulations adopted and issued by the United States Department of Transportation shall govern the transportation of hazardous materials within Kentucky if, as established in Section 2 of this administrative regulation, the commercial motor vehicle and its operator meet the definitions established in 49 C.F.R. 390.5 operating for-hire or in private carriage, interstate, or intrastate, and transportation of hazardous material is by air or highway: [Exemptions and Exceptions. The following exemptions and exceptions to compliance with the provisions of Section 2 of this administrative regulation shall be made:]

(1) 49 C.F.R. Part 107. Hazardous Material Program Procedures; [(a) A city or suburban bus shall not be required to comply with the federal regulations governing this administrative regulation, except as required by paragraph (b) of this subsection.

(b) The operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall:

1. Comply with the provisions of 49 C.F.R. 382 and 383; and
- 2.a. Provide proof of having passed the medical examination set forth in 49 C.F.R. 391; or
- b. Have received a medical waiver as set forth in 601-KAR

11:040 and subsection (7) of this section for intrastate operators or as set forth in 49 C.F.R. 381 for interstate operators.]

(2) 49 C.F.R. Part 130. Oil Spill Prevention and Response Plans; [

(a) A motor vehicle operated by the federal government, a state government, a county government, a city government, or a board of education shall not be required to comply with the federal regulations adopted in this administrative regulation, except as required by paragraphs (b) and (c) of this subsection.

(b) An operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of:

1. Having passed the medical examination set forth in 49 C.F.R. 391; or

2. Having received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section for intrastate operators or as set forth in 49 C.F.R. 381 for interstate operators.

(c) The operator of a vehicle specified in paragraph (a) of this subsection shall meet the requirements of 49 C.F.R. 382 relating to drug and alcohol testing.]

(3) 49 C.F.R. Part 171. General information, Regulations, and Definitions; [(a) A motor vehicle which is used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier shall not be required to comply with 49 C.F.R. 393.9 to 393.33, relative to lighting device requirements, except as required by paragraph (b) of this subsection.

(b) A motor vehicle as described in paragraph (a) of this subsection shall have two (2) stop lamps and mechanical turn signals as set forth in 49 C.F.R. 393.9 to 393.33.]

(4) 49 C.F.R. Part 172. Hazardous Materials Table, Special Provisions, Hazardous Materials communications, Emergency Response information, Training Requirements, and Security Plans; [(a) A motor vehicle which is used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles (eighty and five-tenths (80.5) air kilometers) from the harvest area when operated during daylight hours shall not be required to comply with 49 C.F.R. 393.9 to 393.33, relative to lighting devices requirements, except as required by paragraph (b) of this subsection.

(b) A motor vehicle as described in paragraph (a) of this subsection shall have two (2) stop lamps and mechanical turn signals as set forth in 49 C.F.R. 393.9 to 393.33.]

(5) 49 C.F.R. Part 173. Shippers-general requirements for Shipments and Packagings; [Except for a transporter of hazardous materials subject to the requirements of 601 KAR 1:025, a motor vehicle operator who is operating a vehicle in intrastate commerce shall not be required to be twenty-one (21) years of age as set forth in 49 C.F.R. 391.11(b)(1). However, he shall be at least eighteen (18) years of age.]

(6) 49 C.F.R. Part 175. Carriage by Aircraft; [A utility service vehicle as defined in 49 C.F.R. 395.2 shall be exempt from the maximum driving and on-duty time for drivers as set forth in 49 C.F.R. 395.]

(7) 49 C.F.R. Part 177. Carriage by Public Highway; [Medical waivers for intrastate drivers.

(a) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky may apply for a medical waiver of the requirements of 49 C.F.R. 391 under the provisions of 601 KAR 11:040.

(b) If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time the driver is operating a commercial motor vehicle.]

(8) 49 C.F.R. Part 178. Specifications for Packagings; and [Except for a farm-to-market agricultural transportation motor vehicle with a gross vehicle weight rating of 26,000 pounds or less, a motor carrier which operates exclusively in intrastate commerce shall:

(a) Apply for an intrastate motor carrier identification number on Form TC 95-1, "Kentucky Trucking Application", October 2004 edition or Form TC 92-150, "Application for Intrastate Carrier

Identification Number", March 1996 edition;

(b) Display the assigned intrastate motor carrier identification number and the name of the motor carrier in the same manner as required pursuant to 49 C.F.R. 390.21 except the identification number shall be preceded by the letters "USDOT" and followed by the letters "KY".]

(9) 49 C.F.R. Part 180. Continuing Qualification and Maintenance of Packagings. [Notwithstanding 49 C.F.R. 391.68(c), a Kentucky licensed commercial driver operating a passenger transportation vehicle on behalf of a private motor carrier of passengers shall not be exempt from the sections of 49 C.F.R. 391.41 and 391.45 requiring a driver to be medically examined and to have a medical examiner's certificate on his or her person.]

Section 4. Exemptions and Exceptions. The exemptions and exceptions to compliance with the provisions of Section 2 of this administrative regulation shall be as established in this section.

(1)(a) A motor vehicle operated by the federal government, a state government, a county government, a city government, or a board of education shall not be required to comply with the federal regulations adopted in this administrative regulation, except as required by paragraphs (b) and (c) of this subsection.

(b) An operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having:

1. Passed the medical examination established in 49 C.F.R. 391; or

2. Received a medical waiver as established in 601 KAR 11:040 and subsection (3) of this section for intrastate operators or as established in 49 C.F.R. 381 for interstate operators.

(c) The operator of a vehicle established in paragraph (a) of this subsection shall meet the requirements of 49 C.F.R. 382 relating to drug and alcohol testing.

(2) Except for a transporter of hazardous materials subject to the requirements of 601 KAR 1:025, a motor vehicle operator who is operating a vehicle in intrastate commerce shall not be required to be twenty-one (21) years of age as established in 49 C.F.R. 391.11(b)(1), but shall be at least eighteen (18) years of age.

(3) Medical waivers for intrastate drivers.

(a) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky may apply for a medical waiver of the requirements of 49 C.F.R. 391 under the provisions of 601 KAR 11:040.

(b) If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time the driver is operating a commercial motor vehicle.

(4) Except for a farm-to-market agricultural transportation motor vehicle with a gross vehicle weight rating of 26,000 pounds or less, a motor carrier that operates exclusively in intrastate commerce shall:

(a) Apply for an intrastate USDOT number using the Application for USDOT Number, Form MCS-150, by visiting the Federal Motor Carrier Safety Administration at www.fmcsa.dot.gov; and

(b) Display the assigned intrastate motor carrier identification number and the name of the motor carrier in the same manner as required pursuant to 49 C.F.R. 390.21, except the identification number shall be preceded by the letters "USDOT" and followed by the letters "KY."

(5) Exception to 49 C.F.R. 391.68(c). A Kentucky licensed commercial driver operating a passenger transportation vehicle on behalf of a private motor carrier of passengers shall not be exempt from the sections of 49 C.F.R. 391.41 and 391.45 requiring a driver to be medically examined and to have a medical examiner's certificate on his or her person.[Buses

(1) A bus shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

(2) A seat shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.

(3) An employee in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and

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schedules maintained, so that the passengers will not be subjected to unnecessary delays.

(4) An operator shall take into consideration the health and welfare of his or her passengers and control his or her operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in a position to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. A bus operated by an authorized carrier, except city or suburban buses, shall not be used to transport passengers in excess of its load limit. A passenger shall not be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear door-well.]

Section 5[6]. Out-of-service Criteria [and Sticker].

(1) The basic safety criteria to be followed by the Kentucky State Police or other individual certified through KSP to complete commercial vehicle inspections [Transportation Cabinet] in determining if a commercial motor vehicle driver is declared unqualified or if a commercial motor vehicle is [shall be declared unqualified or] placed out-of-service shall be the ["North American Uniform Out-of-service Criteria["] issued by the Commercial Vehicle Safety Alliance.

(2)(a) If a commercial motor vehicle is being operated in interstate or intrastate commerce with improper or invalid registration, without registration, [or] in violation of any safety regulation or requirement, or with a current federal Out-Of-Service Order issued by the Federal Motor Carrier Safety Administration, a North American Standard (NAS) certified inspector authorized by the Kentucky State Police may place the vehicle out-of-service until the defect or condition is corrected [an officer or inspector of the Division of Motor Vehicle Enforcement shall be authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the commercial motor vehicle is further operated].

(b) Refusal of the vehicle operator to grant permission for a law enforcement officer or inspector to conduct a safety inspection of the vehicle shall be cause for the officer or inspector to hold the vehicle in place or move the vehicle to a safe location, as established by 49 C.F.R. 396.7, [place the vehicle out-of-service] until the permission is granted.

(c) Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of this administrative regulation.

(3)(a) If a commercial motor vehicle driver is [determined to be] unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle.

(b) The commercial motor vehicle driver placed out-of-service shall not again operate a commercial motor vehicle until [he is] once again qualified.

(c) Refusal of the commercial motor vehicle driver to grant permission for a law enforcement officer or inspector to conduct a safety inspection regarding the actual driver [himself] shall be cause for suspension of the certificate or permit of the motor carrier as established by KRS 281.755 [the officer to place the driver out-of-service until the permission is granted].

(d) Operating a commercial motor vehicle in violation of an out-of-service order shall constitute a separate violation of this administrative regulation.

Section 6[7]. Persons Allowed to Perform Physical Examinations. A physical examination required pursuant to state or federal law shall be conducted by a "medical examiner" as defined by [in] 49 C.F.R. 390.5. [The following shall qualify:

(1) Physician licensed by the Kentucky Board of Medical Licensure;

(2) Osteopath licensed by the Kentucky Board of Medical Licensure;

(3) Physician assistant certified by the Kentucky Board of

Medical Licensure if working under the direct supervision of a licensed physician;

(4) Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing; and

(5) Chiropractor licensed by the Kentucky State Board of Chiropractic Examiners.

Section 8. Intrastate Safety Rating System.

(1) The Transportation Cabinet may issue a safety rating to a motor carrier subject to the provisions of this administrative regulation if all of the commercial motor vehicles operated by the motor carrier are operated exclusively in intrastate commerce.

(2) The safety standards and rating criteria set forth in 49 C.F.R. 385 shall be used by the Transportation Cabinet in issuing a safety rating.]

Section 7[9]. Random Alcohol Testing Rate. A commercial motor vehicle employer shall randomly test a percentage of the average number of driver positions employed by the employer. The applicable percentage shall be determined by the Federal Motor Carrier Safety Administration's Administrator annually established [as set forth] in 49 C.F.R. 382.305.

Section 8[40]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for USDOT Number," or "Form MCS-150," by the Federal Motor Carrier Safety Administration, revised November 14, 2019, available at www.fmcsa.dot.gov; and ["North American Uniform Out-of-Service Criteria" revised April 1, 2005 by the Commercial Vehicle Safety Alliance;]

(b) "North American Uniform Out-Of-Service Criteria" updated annually, effective April 1 of each year, by the Commercial Vehicle Safety Alliance, [TC 95-1, "Kentucky Trucking Application," revised October, 2004; and

(c) TC 92-150, "Application for Intrastate Carrier Identification Number," revised March, 1996.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, [at any of the weigh stations operated by the Transportation Cabinet, and] at the Division of Motor Carriers, 2nd Floor, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM GRAY, Secretary, Transportation Cabinet
MATT COLE, Acting Commissioner, Department of Vehicle Regulation
REBECCA GOODMAN, Secretary, Energy and Environment Cabinet
JUSTICE MARY C. NOBLE, Secretary, Justice and Public Safety Cabinet
COLONEL PHILLIP BURNETT, JR., Acting Commissioner, State Police
ERIC FRIEDLANDER, Secretary, Cabinet for Health and Family Services

APPROVED BY AGENCY: March 12, 2021

FILED WITH LRC: March 12, 2021 at 12:23 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 AM EST on May 24, 2021, at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 24, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android: <https://bluejeans.com/497647287/3192?src=calendarLink> Or Telephone: +1.408.419.1715 (United States (San Jose)) +1.408.915.6290 (United States (San Jose)) Meeting ID: 497 647 287, Participant Passcode: 3192, 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,

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the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email jon.johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation adopts the Federal Hazardous Materials Transportation Regulations, 49 C.F.R. (1978), by reference or in its entirety, in order to carry out the intent of KRS 174.400 through 174.425 relating to the transportation of hazardous materials by air or highway. This administrative regulation establishes requirements for motor carriers operating in Kentucky and relates to the safety requirements for motor vehicles and the method of operation. This administrative regulation establishes the requirements related to exemptions from medical examination for private motor carriers of passengers. Modifications to the current regulation eliminate findings that the FMCSA identified as non-compliant with the FMCA regulations.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 174.410(2) in order to carry out the intent of KRS 174.400 through 174.425, and it is also required by KRS 281.600 in order to provide safety and operational requirements for commercial motor vehicles.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by providing safety and operational requirements for commercial motor vehicles and by administering the intent of KRS 174.400 through 174.425 in relation to the applicable federal laws, including 49 C.F.R. (1978), as amended.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 174.425 and 281.600 by providing safety and operational requirements for commercial motor vehicles operating in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will change this existing administrative regulation by incorporating the requirements of KRS 174.410(2) in order to carry out the intent of KRS 174.400 through 174.425 relating to the transportation of hazardous materials by air or highway. KRS 174.410(2) authorizes the Secretary of the Transportation Cabinet to (1) consult with the Secretary of the Environmental and Public Protection Cabinet and the Secretary of the Cabinet for Health and Family Services, and to (2) adopt the Federal Hazardous Materials Transportation Regulations, 49 C.F.R. (1978), as amended, by reference or in its entirety.

(b) The necessity of the amendment to this administrative regulation: KRS 174.410(2) and 281.600 allows the Transportation Cabinet to promulgate administration regulations in order to administer this program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 174.410(2) and 281.600. KRS 174.410(2) requires the cabinet to (1) consult with the Secretary of the Environmental and Public Protection Cabinet and the Secretary of the Cabinet for Health and Family Services, and to (2) adopt the Federal Hazardous Materials Transportation

Regulations, 49 C.F.R. (1978), as amended, by reference or in its entirety. KRS 281.600 allows the cabinet to establish administrative regulations related to the safety and operational requirements for commercial motor vehicles operating in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify provisions in the current administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect: Motor carriers, including owners and operators of motor carriers as well as passengers; Kentucky State Police and KSP sub-grantees; Kentucky Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers; Environmental and Public Protection Cabinet; Cabinet for Health and Family Services

(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 administrative regulation establishes requirements related to exemptions from medical examination for private motor carriers of passengers that are more stringent than the requirements in 49 C.F.R. 391.68(c), which allows these carriers to avoid medical examination. Kentucky does not allow these medical waivers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Compliance with this administrative regulation will allow safe operation of motor carriers throughout the Commonwealth of Kentucky.

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

(a) Initially: There is no cost associated with implementing this administrative regulation.

(b) On a continuing basis: There is no cost associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost associated with implementing this administrative regulation, therefore there is no source of the funding to be used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no cost associated with implementing this administrative regulation, therefore there is no need for an increase in fees or funding in order 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? No tiering is required under any law nor is it necessary for proper application of the law.

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 State Police and KSP sub-grantees; Kentucky Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers; Environmental and Public Protection Cabinet; 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. KRS 174.410(2), KRS 281.600, 49 C.F.R. (1978)

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

dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation should cause no effect on the expenditures and revenues of a state or local government agency.

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation is not expected to generate costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to generate costs.

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

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): No expenditures will be generated by this program.

Other Explanation: n/a

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 49 C.F.R. (1978)

2. State compliance standards: KRS 174.410(2) and 281.600

3. Minimum or uniform standards contained in the federal mandate: 49 C.F.R. 391.68(c) allows private motor carriers of passengers to be exempt from medical examination in order to operate, but Kentucky does not allow private motor carriers of passengers to be exempted.

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 establishes requirements related to exemptions from medical examination for private motor carriers of passengers that are more stringent than the requirements in 49 C.F.R. 391.68(c), which allows these carriers to avoid medical examination. Kentucky does not allow these medical waivers.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Due to the cabinet’s compelling interest of public safety, a Kentucky licensed commercial driver operating a passenger transportation vehicle on behalf of a private motor carrier of passengers shall not be exempt from the sections of 49 C.F.R. 391.41 and 391.45 requiring a driving to be medical examined and to have a medical examiner’s certificate on his or her person. This is notwithstanding 49 C.F.R. 391.68(c). There are instances, however, where a medical waiver is acceptable, as in the case of intrastate Kentucky motor carriers.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:180. Recordkeeping, reporting, and 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 for the collection, compilation, and analysis of [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 emergency 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) “C.F.R.” means Code of Federal Regulations.

(3) [(2)] “Employee” is defined by KRS 338.015(2).

(4) [(3)] “Employer” is defined by KRS 338.015(1).

(5) [(4)] “Hospitalization” means formal admission to a hospital or clinic for care or treatment [; treatment, observation, or diagnostic testing].

(6) [(5)] “Loss of eye” means the physical removal of an eye from the socket.

(7) [(6)] “Occupational Safety and Health Act” or “OSHA” means KRS Chapter 338.

(8) [(7)] “Secretary of Labor” means the Secretary of the United States Department of Labor or the Secretary of the Labor Cabinet.

(9) [(8)] “Section 11(c) of the Act” means KRS 338.121(3).

Section 2. Except as modified by the definitions in Section 1 and the requirements in Sections 3 and 4 of this emergency administrative regulation, an [An] employer shall comply with 29 C.F.R. Part 1904, Recording and Reporting Occupational Injuries and Illnesses, [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 of this administrative regulation:

(1) 29 C.F.R. Part 1904, effective July 1, 2019; and

(2) The amendment to 29 C.F.R. Part 1904 as published in the May 14, 2019 Federal Register, Volume 83, Number 93].

Section 3. Reporting Fatalities, Amputations, Hospitalizations, or Loss of Eye. (1) The reporting requirements established in this section shall apply in lieu of 29 C.F.R. 1904.39.

(2) [(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, the work-related death of an employee, including death resulting from a heart attack [any of the following which occurs in the work environment, or is caused or contributed to by an event in the work environment:

(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].

(3) [(2)] The report required pursuant to subsection (2) [(4)] of this section shall be made within eight (8) hours from when the death [or hospitalization of three (3) or more employees] 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)].

(4) [(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 that [which] occurs as a result of a work-related incident [in the work environment, or is caused or contributed to by an event in the work environment]:

(a) An amputation suffered by an employee;

(b) An employee’s loss of an eye; or

(c) The hospitalization of an employee [fewer than three (3) employees within seventy-two (72) hours following the incident], including [any] hospitalization resulting from a heart attack.

(5) [(4)] The report required pursuant to subsection (4) [(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] is reported to the employer, the employer’s agent, or another employee.

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Section 4. If the employer cannot speak with someone in the Frankfort office, the employer shall make the report required pursuant to Section 3 of this emergency administrative regulation to the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742)[

(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].~~

KIMBERLEE PERRY, Commissioner
LARRY ROBERTS, Secretary

APPROVED BY AGENCY: March 9, 2021

FILED WITH LRC: March 10, 2021 at 1:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2021 at 10:00 a.m. (ET). The hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/84337571322?pwd=ejM4cWp6V3NDc3NleHJ5QVZSMzJqUT09>, password 860172 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2021. 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: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms not used in the federal standard. The amended definition for hospitalization eliminates the requirement to report hospitalizations for observation or diagnostic testing. The amended definition matches the federal definition. Section 2 requires employers to comply with the requirements of 29 C.F.R. Part 1904 except as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this administrative regulation. Section 3 establishes the reporting criteria for an employee death, amputation, in-patient hospitalization, or loss of eye. To provide clarity and promote understanding, the language in Section 3 clarifies the reporting criteria apply when the event is work related. Section 3 removes the requirement that dates back to the 1980s to report the hospitalization of three (3) or more employees within eight (8) hours. This administrative regulation retains other provisions of the regulation that have been effective since August 7, 2006.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i) which all require the Kentucky OSH Program to

be as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.161(1) requires the Department of Workplace Standards to promulgate administrative regulations for the collection, compilation, and analysis of occupational safety and health statistics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i) which all require the Kentucky OSH Program to be as effective as OSHA. This administrative regulation ensures the state is as effective as the federal requirement.

(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: Section 1 of this administrative regulation defines terms not used in the federal standard. The amended definition for hospitalization eliminates the requirement to report hospitalizations for observation or diagnostic testing. The amended definition matches the federal definition. Section 2 requires employers to comply with the requirements of 29 C.F.R. Part 1904 except as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this emergency administrative regulation. Section 3 establishes the reporting criteria for an employee death, amputation, in-patient hospitalization, or loss of eye. To provide clarity and promote understanding, the language in Section 3 clarifies the reporting criteria apply when the event is work related. Section 3 removes the requirement that dates back to the 1980s to report the hospitalization of three (3) or more employees within eight (8) hours. This administrative regulation retains other provisions of the regulation that have been effective since August 7, 2006.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated to be at least as effective as OSHA. This administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 338.161, which requires the Department of Workplace Standards to develop and maintain a program of collection, compilations, and analysis of occupational safety and health statistics.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all clarity and a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in all activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

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(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

This amendment promotes employee safety and health throughout Kentucky and ensures the state program as effective as the federal program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There are no new costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There are no fees associated with this administrative regulation. There is no need to increase funding for this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

the first full year the administrative regulation is to be in effect. None.

(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? There are no costs associated with this amendment.

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional expenditures to employers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2), 29 U.S.C. 667

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as OSHA. This administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated to be at least as effective as OSHA. This administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

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 differs from the federal requirement and allows employers greater reporting flexibility.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This administrative regulation allows employers greater reporting flexibility.

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 affects any unit, part, or division of local government covered by KRS 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), 29 C.F.R. 1956.10(i)

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

LABOR CABINET
Department of Workers' Claims
(Amendment)

803 KAR 25:015. Issuance of citations and procedure in workers' compensation enforcement hearings.

RELATES TO: KRS Chapter 13B, 342.990

STATUTORY AUTHORITY: KRS 13B.090(3), 13B.170, 342.267, 342.260, 342.990(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes administrative agencies to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 13B governing administrative hearings. KRS 342.260 requires the Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims to promulgate administrative regulations necessary to carry on the work of the department[~~office~~] and administrative law judges. KRS 13B.070(3) requires administrative agencies to promulgate administrative regulations to set forth specific procedures to facilitate informal settlement of matters. KRS 342.260(3) requires processes and procedures to be as summary and simple as reasonably possible. KRS 342.267 and 342.990 establish penalties for various violations of KRS Chapter 342. KRS 342.990 also provides a party the opportunity to challenge a penalty assessed against them. This administrative regulation establishes procedures for enforcement hearings under KRS Chapter 342.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Commissioner" is defined by KRS 342.0011(9). [~~The definition of "hearing officer" shall be governed by KRS 13B.010(7).~~]

(3) "Business[~~Working~~] day" means a day that falls on a Monday through Friday, with the exception of a state or federal holiday, or other day on which the Department [~~Office~~] of Workers' Claims is officially closed for business.

Section 2. (1) Prior to issuing a notice of citation and penalty, the commissioner [~~executive director~~] may issue a show cause order to a person who has allegedly violated KRS Chapter 342 or an administrative regulation promulgated thereunder to appear at an informal conference to show cause why a citation should not be issued.

(2) The show cause order shall include the following:

(a) Detailed explanation of alleged violations;

(b) Statutes or administrative regulations that were allegedly violated; and

(c) Date, time and place of show cause informal conference.

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(d) If the commissioner [~~executive director~~] is not presiding over the informal conference, the name of the commissioner's designee [~~presiding hearing officer~~].

(3) The person issued a show cause order shall be present on the specified date, time and place and show cause why a citation should not be issued.

(4) The commissioner [~~executive director~~] or the commissioner's designee [~~hearing officer~~] shall gather relevant evidence concerning the alleged violations of KRS Chapter 342 from a representative of the Department [~~Office~~] of Workers' Claims and the person to whom the show cause order was issued.

(5) If the commissioner [~~executive director~~] is presiding over the informal conference and the parties wish to resolve the matter informally without the necessity of a citation and a formal hearing, an agreement may be entered.

(6) If the commissioner's designee [~~a hearing officer~~] is presiding over the informal conference and the parties wish to resolve the matter informally without the necessity of a citation and formal hearing, a recommended order shall be submitted to the commissioner [~~executive director~~] for approval.

(7) If the parties do not resolve the matter by agreement and the commissioner's designee [~~a hearing officer~~] presides over the informal conference, the commissioner's designee [~~hearing officer~~] shall issue a recommended order which includes his findings of fact, conclusions of law, and recommended disposition to the commissioner [~~executive director~~] as to whether a citation should be issued.

(8) The commissioner [~~executive director~~] shall review the evidence and if applicable the recommended order and either:

(a) Issue a citation for a violation or violations of KRS Chapter 342 or the administrative regulations promulgated thereunder;

(b) Issue a statement that no citation is warranted; or

(c) Request additional evidence for further review.

(9) The commissioner has the discretion to immediately issue a citation for any violation of KRS Chapter 342 or the administrative regulations promulgated thereunder without issuing a show cause order or conducting an informal conference.

Section 3. Issuance of Citation and Notice of Contest. (1) If the commissioner [~~executive director~~] initiates enforcement of a civil penalty pursuant to KRS 342.990, the "notice of citation and penalty" shall be delivered to the appropriate party by certified mail or hand-delivered by authorized personnel of the Department [~~Office~~] of Workers' Claims.

(2) The party to whom a notice of citation and penalty has been delivered may contest the citation and penalty by filing a written "notice of contest" with the commissioner [~~executive director~~] within fifteen (15) working days of the receipt of the notice of citation and penalty.

(3) A notice of contest shall state the following:

(a) The specific grounds for [~~Grounds of~~] the contest; and

(b) Whether the fact of a violation or level of the civil penalty, or both, is being contested.

(4) If a notice of contest is not timely filed, the citation shall be deemed final and the penalty due for payment.

Section 4. Assignment to Administrative Law Judge; Prehearing Procedure. (1) [~~As soon as practicable upon receipt of a notice of contest, the executive director shall direct the chief administrative law judge to assign the matter to an administrative law judge for a hearing.~~

(2) In accordance with KRS 342.990(5), the administrative law judge may require parties to file a stipulation of uncontested facts not later than five (5) business [~~working~~] days prior to the scheduled hearing date.

(3) The administrative law judge may require each party to file a witness and exhibit list described in KRS 13B.090(3) not later than five (5) business [~~working~~] days prior to the scheduled hearing date with the administrative law judge and all other parties.

Section 5. Formal Hearing. (1) An administrative law judge shall preside over the conduct of the formal hearing and shall regulate the course of the proceeding in accordance with KRS

Chapter 13B and any prehearing order issued by the administrative law judge.

(2) A party may submit proof at the formal hearing through the use of depositions, if the other parties received timely notice and had the opportunity to attend.

Section 6. Orders. (1) The administrative law judge shall determine if the commissioner's [~~executive director's~~] citation was properly issued and the penalty appropriately assessed and issue a final order in accordance with KRS 342.990(5) and 13B.120.

(2) The administrative law judge's final order shall be appealable to the Franklin Circuit Court in accordance with KRS 342.990(6) and 13B.140.

Section 7. Appeal/Payment of Fine. (1) If a party does not file a petition of appeal pursuant to KRS 342.990 and 13B.140, the order shall be deemed final and the civil penalty assessed in the order shall be due.

(2) A civil penalty that is not appealed to the Franklin Circuit Court shall be paid by certified check or money order payable to the Kentucky State Treasurer. The fine shall be mailed to the Department of Workers' Claims, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. [~~Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601 ATTN: Enforcement Docket.~~]

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260 and 342.035.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: February 18, 2021

FILED WITH LRC: February 18, 2021 at 2:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. 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 May 31, 2021. 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: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of this administrative regulation is to establish the procedure for enforcement hearings under KRS Chapter 342.

(b) The necessity of this administrative regulation: KRS 13B.170 authorizes administrative agencies to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 13B governing administrative hearings. KRS 342.260 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations necessary to carry on the work of the department and administrative law judges. KRS

13B.070(3) requires administrative agencies to promulgate administrative regulations to set forth specific procedures to facilitate informal settlement of matters. KRS 342.260(3) requires processes and procedures to be as summary and simple as reasonably possible. KRS 342.267 and 342.990 establish penalties for various violations of KRS Chapter 342. KRS 342.990 also provides a party the opportunity to challenge a penalty assessed against them. This administrative regulation establishes procedures for enforcement hearings under KRS Chapter 342.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.267 and 342.990 establish penalties for various violations of KRS Chapter 342. KRS 342.990 also provides a party the opportunity to challenge a penalty assessed against them. This administrative regulation establishes procedures for those enforcement hearings under KRS Chapter 342.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures for enforcement hearings under KRS Chapter 342.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates language to match the Department's current structure and more accurately describes the current process once an enforcement matter is assigned to an administrative law judge.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to update the language to match the Department's current structure and more accurately describe the current process once an enforcement matter is assigned to an administrative law judge.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates language to comply with the Department's current structure and more clearly states the process once assigned to an administrative law judge.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to those receiving and challenging an enforcement action by the commissioner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Employers, insurance carriers, self-insured groups, and individual self-insured employers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will not be required to take any new action based upon the amendments to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be aware of the enforcement process.

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

(a) Initially: None

(b) On a continuing basis: There should be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal 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 in fees or funding is 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 or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies to all parties 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? The Department of Workers' Claims and all agencies or departments of government with employees, insurance carriers for those entities, self-insured groups for those entities, and any of those entities currently authorized to self-insure.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.090(3), 13B.170, 342.260, 342.990.

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 amendments to this administrative regulation should have no effect on current expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional 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:

LABOR CABINET
Department of Workers' Claims
(Amendment)

803 KAR 25:021. Individual self-insurers.

RELATES TO: KRS 342.0011, 342.340, 342.342, 342.345, 342.347

STATUTORY AUTHORITY: KRS 342.260(1), 342.340, 342.345

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims to promulgate administrative regulations necessary to implement KRS Chapter 342. KRS 342.340 and 342.345 require the commissioner [~~executive director~~] to establish requirements for individual self-insured employers [~~self-insurers~~]. This administrative regulation establishes minimum requirements for an individual employer who seeks to or is authorized to self-insure for the purpose of [~~self-insures~~] workers' compensation [~~liability~~].

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday or any day which is a legal holiday. [~~"Employer" means an employer subject to KRS Chapter 342.~~]

(2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.

(3) [(2)] "Commissioner [~~Executive director~~]" is defined by KRS 342.0011(9).

(4) "Employer" means an employer subject to KRS Chapter 342.

(5) [(3)] "Guarantor" means a parent entity: [company whose financial statement is used by the applicant to obtain self-insurance status].

(a) That agrees it is responsible for and shall meet any and all workers' compensation obligations of the subsidiary when the subsidiary fails to meet its responsibilities as a self-insured employer; and

(b) Whose financial condition and affairs related to workers' compensation are the basis upon which the subsidiary is authorized to self-insure.

(6) "Lapsed" means there is no possibility of compensation under KRS Chapter 342 because the claim is barred by time or otherwise.

(7) "Loss Statement," or "loss run" means a statement of all claims stemming from a self-insured employer's entire period of self-insurance in the form required by the Department of Workers' Claims of:

(a) All past known liabilities and amounts paid at a given point in time; and

(b) Reserve estimates for all future liabilities; and

(c) Known liabilities and amounts paid or amounts anticipated to be paid for the immediate prior calendar year.

(8) "Paid" means there is no possibility of further compensation under KRS Chapter 342 because the employee and any eligible dependent of the employee has been provided all compensation awarded or that could possibly be awarded under KRS Chapter 342 with respect to a compensable claim.

(9) "Period of self-insurance" means the period an employer was authorized by the commissioner to pay directly the compensation provided in KRS Chapter 342 in the amount, manner, and when due.

(10) "Reserve" means an estimate by the employer of the undiscounted total compensation to be paid over the entire life of a claim. A reserve may be limited to a specific portion of the entire compensation when so designated; a medical reserve would refer to the medical compensation to be paid through the entire life of the claim.

(11) "Security" means a required deposit by an employer authorized to self-insure, acceptable to the commissioner and in the amount he directs, that provides the commissioner immediate access to security proceeds sufficient to make direct payment of compensation in claims arising from the employer's period of self-insurance until each claim for compensation has been fully paid, fully settled, or lapsed, so there is no possibility of further liability.

(12) "Security proceeds" means:

(a) Security in the form of cash money paid by an issuer of security from its own property in response to the commissioner's call or demand; or

(b) Cash money deposited directly with the commissioner in a financial institution's account.

(13) "Self-Insurance" or "Self-Insure" means the nontransferable status of an employer:

(a) That secured its liability for workers' compensation by depositing with the commissioner acceptable security, in the amount directed by the commissioner, to secure the payment of compensation provided by KRS Chapter 342 until every claim for compensation has been fully paid, fully settled, or lapsed, so that there is no possibility of further liability; and

(b) That has been authorized by the commissioner to pay directly the compensation provided in KRS Chapter 342, in the amount, manner, and when due, rather than the employer insuring and keeping insured his liability for compensation in an entity authorized to transact the business of workers' compensation insurance in this state;

(14) "Self-Insured Employer" means an employer currently authorized by the Commissioner to self-insure and is synonymous with the term "self-insurer" as that term is defined in KRS 342.0011.

(15) [(4)] "Service organization" or "third party administrator," means a person or entity which provides services including claims adjustment, safety engineering, computation of statistics,

preparation of loss statements, preparation of any other required self-insurance report, and other services that may be required by a self-insured employer.

(16) "Settled" means there is no possibility of future compensation arising from an injury because the employee has bargained for and received money for all compensation the employee and any eligible dependent could be awarded under KRS Chapter 342 for that injury and the bargain has been approved by an administrative law judge.

(17) [~~or tax reports, purchase of excess insurance, or preparation of another required self-insurance report.~~]

(5) "Specific excess insurance" means a contract or policy of insurance whereby a self-insured employer is indemnified for amounts paid in excess of a specific dollar amount stemming from one (1) injury or exposure for which compensation is provided in this chapter. [an insurance policy which insures the amount of a claim from one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.]

Section 2. Certification. (1) A person, party, or employer shall not act as or hold itself out as an [approved] individual self-insured employer [self-insurer] unless the employer has been approved by the commissioner [executive director] in accordance with this administrative regulation.

(2) An employer authorized [~~A certification issued~~] by the commissioner [executive director] to self-insure shall be self-insured until voluntary surrender by the employer pursuant to Section 10 of this administrative regulation or revocation [~~revoked or modified~~] by the commissioner [executive director] pursuant to Section 11 [40] of this administrative regulation.

(3) A self-insured employer shall adjust to a final conclusion each claim that arises during the period the employer is authorized to self-insure. An employer shall hire only those persons duly licensed under Kentucky law to administer and adjust workers' compensation claims.

(a) A self-insured employer may contract with an individual, service organization, or third party administrator, to adjust to a final conclusion each claim that arises during the period the employer is authorized to self-insure. The employees and agents of the contracted individual, service organization, or third party administrator, shall be duly licensed under Kentucky law to administer and adjust workers' compensation claims.

(b) Where an employer has contracted with an individual, service organization, or third party administrator, to perform these functions, the actions of the individual, service organization, or third party administrator, are subject to the standards set forth in KRS 342.267 and 803 KAR 25:240 and the self-insured employer for whom the individual, service organization, or third party administrator, is acting is subject to any penalties which may be assessed for failure to meet those standards.

Section 3. Application Process. (1) In order to be certified as an individual self-insured employer, the applicant or guarantor shall have assets in excess of all liabilities of at least \$10,000,000.

(2) [(4)] An initial application for individual self-insurance shall be submitted to the commissioner [executive director] on Form SI-02, Employer's [Employers] Application for Permission to Carry Its [His] Own Risk Without Insurance, and shall include:

(a) The employer's name, location of its principal office, date of organization, identification of its immediate parent organization, if any, and its ultimate parent, the percentage of shareholder ownership of its immediate parent organization, identification of its fiscal year and federal identification number. The applicant shall disclose and fully identify the relationship with all subsidiaries. [A subsidiary which is to be covered under the application, or who is already self-insured, shall be identified with the relationship to the applicant described fully];

(b) A statement of the principal business activities engaged in Kentucky by the applicant, [including] a list of site locations, and the number of employees at each site;

(c) A certified audit report of the applicant's financial status for three (3) years immediately preceding the application, prepared

and executed by a certified public accountant or, if the applicant is a subsidiary desiring its parent to be a Guarantor, a certified audit report of the parent's financial status for three (3) years immediately preceding the application, prepared and executed by a certified public accountant.

(3) The department shall review the applicant's Form SI-02 and certified audit reports and notify the applicant within sixty (60) days after receipt of the Form SI-02 and certified audit reports whether its application has been rejected or whether the applicant may continue with the application process.

(4) Within fifteen (15) days of notification by the department that the applicant may proceed with the application process, the applicant shall provide:

(a) Loss Statements in the required electronic format of all claim payments for the five (5) years immediately preceding the application;

(b) An estimate of annual payroll;

(c) Any Occupation Safety and Health Administration ("OSHA") violations for five (5) years; and

(d) Any other states in which the employer is authorized to self-insure.

(5) The Department shall review the applicant's Loss Statements, estimate of annual payroll, any OSHA violations, and any other states in which the employer is authorized to self-insure and notify the applicant within sixty (60) days after receipt of the applicant's information whether its application has been rejected or whether the applicant may continue with the application process.

(6) Upon notification the applicant may continue, the applicant shall provide:

(a) The proposed specimen specific excess insurance policy, identifying the insurance company, retention level and limits of liability; and

(b) If an individual or service organization shall be responsible for administration or adjustment of a workers' compensation claim:

1. A statement to the commissioner attesting to the individual or organization's qualifications to administer and adjust a workers' compensation claim; and

2. A statement from the service organization and self-insured employer that any contract between the employer and service organization shall include one (1) of the following provisions:

(a) The service organization shall adjust to a final conclusion each claim that results from an occurrence during the period for which the contract is effective unless a substitute service organization has been procured; or

(b) The service organization shall adjust each claim for a period of sixty (60) days following an order from the commissioner finding the self-insured employer in default unless a substitute service organization has been procured.

(7) The Department shall review the applicant's proposed specimen specific excess insurance policy, statement attesting to the qualifications of the proposed service organization, and statement from the proposed service organization, and notify the applicant within thirty (30) days after receipt whether the applicant's application has been rejected or whether the applicant may continue with the application process. If the applicant may continue with the application process the department will notify the applicant of the amount of required security.

(8) Upon notification that the applicant may continue, the applicant shall provide:

(a) A copy of the proposed letter of credit, bond or security deposit instrument required by Section 5 of this administrative regulation;

(b) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure;

(c) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent on Form SI-01, Self-Insurers' Guarantee Agreement;

(9) The commissioner shall consider all relevant factors, the prospect of increased losses due to the employer's cessation of operations, and the information supplied by the applicant during the application process when evaluating whether an applicant may be authorized to directly pay its workers' compensation liabilities as

incurred. The information submitted during the application process shall accurately reflect:

(a) The financial strength of the applicant or guarantor;

(b) The experience of the proposed service organization;

(c) The applicant's ratio of current assets to current liabilities, the applicant's ratio of long-term debt to net worth, and shareholder equity, or, when applicable, the guarantor's ratio of current assets to current liabilities, the guarantor's ratio of long-term debt to net worth, and shareholder equity;

(d) The profit and loss history of the applicant or guarantor;

(e) The workers' compensation loss history of the applicant or guarantor;

(f) The number of employees and degree of hazard to which employees are exposed;

(g) Any functioning safety programs;

(i) Whether the applicant uses an approved managed care plan for treatment of injured workers;

(k) Any Occupation Safety and Health Administration ("OSHA") violations for five (5) years; and

(l) Any other states in which the employer is authorized to self-insure.

(10) The commissioner shall render a decision regarding whether the applicant is authorized to self-insure within thirty (30) days of completion of the application process and submission of all required documents.

(a) The commissioner's decision shall state the date upon which the applicant is authorized to self-insure;

(b) The security to be deposited by the applicant with the commissioner shall be received by the commissioner no later than fifteen (15) days prior to the date upon which the applicant becomes authorized to self-insure;

(c) A copy of the specific excess insurance policy obtained by the applicant shall be received by the commissioner no later than fifteen (15) days prior to the date upon which the applicant becomes authorized to self-insure.

(11) Variation from the requirements of this section may be sought by application to the commissioner;[;] variation may be granted by the commissioner for good cause shown.[

(c) The proposed specimen specific excess insurance policy, identifying the insurance company, attachment points and limits of liability. A copy of the policy or certificate of insurance shall be received by the executive director at least five (5) days prior to certification of self-insurance;

(d) A copy of the proposed surety deposit or letter of credit instrument required by Section 5 of this administrative regulation. The surety shall be received by the executive director prior to certification of self-insurance;

(e) A schedule of projected workers' compensation claim liabilities and annual payment requirements for the three (3) years preceding the application;

(f) An estimate of annual payroll and a statement of loss runs;

(g) A certified audit report of the applicant's financial status for three (3) calendar years immediately preceding the application, prepared and executed by a certified public accountant;

(h) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure;

(i) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent corporation on Form SI-01, Self-Insurers' Guarantee Agreement;

(j) If an individual or service organization shall be responsible for administration or adjustment of a workers' compensation claim, satisfactory evidence submitted to the executive director as to the organization's qualifications to administer and adjust a workers' compensation claim; and

(k) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in subsection (4) of this section.

(2) An applicant may perform, if qualified, a function of a service organization or may contract with a service organization to perform these functions. An applicant's or service organization's employees and agents shall be duly licensed to perform those

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functions for which a license is required by Kentucky law.

(3) The application shall be filed no later than thirty (30) days prior to the proposed inception date of self-insurance.

(4) Upon receipt of a complete application and all required documents, the executive director shall approve or reject status as a self-insurer within thirty (30) days.

(5) A contract with a service organization shall include one (1) of the following provisions:

(a) The service organization shall adjust to a final conclusion each claim that results from an occurrence during the period for which the contract is effective unless a substitute service organization has been procured; or

(b) The service organization shall adjust each claim for a period of sixty (60) days following an order from the executive director finding the self-insured employer in default unless a substitute service organization has been procured.

(6) Variation from the requirements of this section, for good cause shown, may be sought by application to the executive director.

Section 4. Approval. (1) In determining if an applicant is eligible for self-insurance and in establishing the amount of surety required, the executive director shall consider all relevant factors including the following:

(a) The financial strength of the applicant or guarantor;

(b) The excess insurance policy and retention level;

(c) The experience of the service organization;

(d) The ratio of current assets to current liabilities, the ratio of long-term debt to net worth, and shareholder equity;

(e) Profit and loss history;

(f) Workers' compensation loss history of the applicant;

(g) The prospect of increased losses by the employer's cessation of operations in Kentucky;

(h) The number of employees and degree of hazard to which employees are exposed;

(i) Safety programs; and

(j) Use of an approved managed care plan for treatment of injured workers.

(2) In order to be certified as an individual self-insurer, the applicant or guarantor shall have assets in excess of all liabilities of at least \$10,000,000. Variance from this requirement may be granted to a currently certified individual self-insurer who has demonstrated excellent claims paying capability and over-all financial stability.

(3) Approval shall be granted if the executive director:

(a) Finds the applicant has complied with all sections of this administrative regulation; and

(b) Is satisfied that the persons responsible for the operations of the applicant are financially stable, competent, and experienced in the administration of workers' compensation self-insurance.]

Section 4[5]. Specific Excess Insurance [and Surety Requirements]. (1) Specific excess insurance shall be purchased with:

(a) A coverage limit of at least \$10,000,000 per occurrence in excess of the retention level; and

(b) A maximum retention level of \$1,000,000 per occurrence unless a different retention level is specifically approved by the commissioner; upon approval of a retention level in excess of \$1,000,000, additional security may be required [executive director].

(2)(a) To be eligible to write specific excess insurance for an individual self-insured employer [self-insuree] in Kentucky, a casualty insurance company, admitted to do business in the Commonwealth of Kentucky, on its latest financial statement shall reflect a minimum policyholder surplus of not less than \$25,000,000.

(b) The casualty insurance company shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over an extended period of time.

Section 5. Security. (1) [(3)] Except as provided in subsection (4) of this section, each employer authorized to self-insure [who

qualifies for a self-insurance certificate] shall, [prior to the certificate being issued,] provide [primary] security in the form of a continuous surety bond on Form SI-03, Continuous Bond, or by irrevocable letter of credit on Form SI-04, Letter of Credit, in the [an] amount specified by the commissioner [executive director], but not less than \$500,000.

(2) In fixing the amount of security, the commissioner [executive director] shall consider all relevant factors which may include the following:

(a) Liability associated with the cessation of operations by the individual self-insured employer;

(b) Examination of injury claims reported to the Department of Workers' Claims;

(c) Examination of the loss history associated with injury claims reported to the Department of Workers' Claims;

(d) Examination of the financial condition of the employer;

(e) Examination of the service organization, if any;

(f) Examination of the financial condition and assets of the issuer of the security;

(g) Additional factors found pertinent by the commissioner; and

(h) The experience of the Department of Workers' Claims.

(3) The amount of security maintained with or under the commissioner's control shall be the amount determined by the commissioner to be necessary to secure the payment of all compensation liabilities incurred by a self-insured employer until each claim for compensation has been fully paid, fully settled, or lapsed, so there is no possibility of further liability. The failure to challenge the commissioner's determination as provided in section 13 of this administrative regulation shall constitute an admission by the employer that the determined amount is necessary to pay all incurred claims until fully paid, fully settled, or lapsed, so there is no possibility of further liability to the employer and a waiver of any future challenge by the employer of the determined security amount.

(4) Only upon approval by the commissioner, in lieu of a bond or letter of credit, may an employer deposit cash or securities in an amount specified by the commissioner and in a financial institution approved by the commissioner, but not less than \$5,000,000. To be acceptable, a security which is deposited shall be eligible under the laws of Kentucky for investment by insurance companies. The deposited cash or securities shall be maintained directly with the commissioner or be in the commissioner's control and a perfected security interest shall be granted to the commissioner in the deposited cash or securities. [including liability associated with anticipated claims occurring upon the cessation of all operations by the individual self-insurer in the state of Kentucky.]

(4) In lieu of a bond with security or letter of credit, the employer may deposit cash or securities through submission of Form SI-05, Deposit Contract, in an amount specified by the executive director, but not less than \$500,000. To be acceptable, a security which is deposited shall be eligible under the laws of Kentucky for investment by insurance companies.

(5) If an employer is no longer self-insured, the amount of surety shall be set by the executive director in accordance with the minimum amounts established in this subsection:

(a) A minimum surety of \$250,000 shall be maintained for a period of ten (10) years.

(b) A minimum surety of \$100,000 shall be maintained for the eleventh to twentieth year after the employer's departure from self-insured status.]

Section 6. Coverage of Subsidiary or Related Corporations. (1) A corporation having a wholly-owned subsidiary may submit one (1) joint application to the commissioner [executive director], if the parent corporation has sufficient assets to qualify for a self-insurance certificate for both itself and the subsidiary. A joint application shall be accompanied by a certificate from [of] the secretary of each corporation indicating that their respective boards of directors have by resolution authorized joint and several liability for all the workers' compensation claims asserted against them. These certificates shall be effective until revoked by the corporations following thirty (30) days written notice to the commissioner [executive director].

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(2) Any employer currently authorized to self-insure shall immediately notify the commissioner and fully identify any and all subsidiaries obtained during the employer's period of self-insurance and shall execute a Form SI-01, Guaranty Agreement.

Section 7. Examination and Review of Filings. A certified public accountant or one or more other qualified individuals [individual] may be employed by the Department [Office] of Workers' Claims for the purpose of reviewing and analyzing the annual filings of individual self-insured employers [self-insurers], and applicants for self-insurance, and for making recommendations based on that review.

Section 8. Annual Filings. (1) Annually, the Department shall by facsimile, electronic mail or the United States Postal Service, deliver to every employer authorized by the Commissioner to self-insure a letter stating the requirements to maintain the employer's certification to self-insure. The letter shall include a request for:

(a) A completed Employers Application for Recertification, Form SI-02R;

(b) A certified version of the most current audited financial statements;

(c) The amount and form of the security to be deposited with the commissioner;

(d) Information related to the employer's required specification excess insurance;

(e) Information related to any service organization used by the employer; and

(f) May include a request for the completion of a Self-Insurer's Guaranty Agreement, SI-01, when applicable, or any other information the commissioner may deem necessary in order to determine the employer has the financial ability to directly pay the compensation provided in KRS Chapter 342.

(2) Annually, the department shall by facsimile, electronic mail or the United States Postal Service, deliver to every employer authorized by the Commissioner to self-insure a letter instructing self-insured employers to file the following no later than the third Monday in February of each year:

(a) A loss statement;

(b) A statement furnishing the premium specified in KRS 342.0011(28) and its calculation;

(c) A statement of the total payroll for the prior calendar year by quarter;

(d) A certification that the medical reserves are calculated and projected for the life of a claim pursuant to KRS 342.0011(28)(a); and

(e) Any other reasonable information requested by the commissioner, including relevant claim data.

(3) In order to maintain its certification to self-insure, an employer shall timely complete and provide all information and documentation requested in the annual letters; failure to do so may subject the employer's self-insurance certification to revocation.]

(1) An individual self-insured employer shall file with the executive director on or before 120 days from the end of the self-insured's fiscal year:

(a) The statement of financial condition required by KRS 342.347(2);

(b) Total payroll for the prior calendar year, the projected payroll for the next year by quarter, and other reasonable information requested by the executive director, including relevant claim data; and

(c) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in Section 3(4) of this administrative regulation.

(2) At least ten (10) days prior to the end of each self-insurance year, the individual self-insurer shall file proof of specific excess insurance for the following year with the executive director.

(3) An individual self-insured employer shall file loss data reports which shall:

(a) Include a surety loss report;

(b) Include a premium loss report;

(c) Include a certification that the medical reserves are

calculated and projected for the life of a claim pursuant to KRS 342.0011(28)(a); and

(d) Be filed no later than the third Monday in February of each year.

(4) If the annual required filings are not timely made, the self-insurance certificate shall be subject to modification or revocation.]

Section 9. Change in Ownership; Subsidiaries; Mergers and Acquisitions. (1) When [If] there is a change in majority ownership of a self-insured employer or its [a] parent company, the individual self-insured employer [self-insurer] shall notify the commissioner [executive director] within thirty (30) days of that change. A new application to self-insure shall be filed upon a change in ownership.

(2) When [If] another [an] employer is added to, merged, [acquired,] or otherwise acquired by an employer currently authorized to self-insure [brought within the self-insurance coverage], the individual self-insured employer shall notify the commissioner [executive director] within thirty (30) days and the adequacy of the employer's premium and security [surety bond] shall be reviewed and shall be increased if the review determines an increase is necessary. [accordingly if necessary to remain adequate.]

(3) When there is a change in majority ownership of a formerly self-insured employer or its parent company, the individual self-insured employer shall notify the commissioner within thirty (30) days of that change. [If the payroll of the individual self-insurer during a quarter exceeds 125 percent of the projection previously filed, the individual self-insurer shall immediately report that change to the executive director and the surety bond requirements may be reviewed and the bond shall be increased accordingly.]

Section 10. Voluntary Surrender of Certificate.

(1) An employer voluntarily surrenders its Certificate to self-insure:

(a) Upon written notice to the commissioner that the employer no longer desires to be self-insured, including the date and time at which the employer intends to cease to be self-insured; or

(b) Upon the effective date of a policy of workers' compensation insurance securing the employers' liability for the compensation provided in this chapter; or

(c) Upon notification to the commissioner the employer shall cease to pay directly the compensation provided in this chapter; or

(d) Upon the failure to deposit adequate security in the amount required by the commissioner; or

(e) Upon filing an action in bankruptcy unless the employer notifies the commissioner of its intent to continue to pay the compensation provided in this chapter and the commissioner agrees to authorize the continued direct payment.

(2) An employer that intends to secure its liability for compensation by obtaining a policy of workers' compensation insurance shall notify the commissioner of the name of the insurance carrier whose policy shall become effective and the date and time such coverage shall become effective.

(3) A formerly self-insured employer shall not be relieved of the compensation obligations incurred during its period of self-insurance until every claim has been fully paid, fully settled, or lapsed, so there is no possibility of further liability.

(4) (a) When the employer is no longer self-insured due to the voluntary surrender of its certificate, the employer shall continue to deposit security with the commissioner in the amount and in the form last determined by the commissioner for a period no less than five (5) years from the date the employer ceased to be self-insured; no request for reduction shall be considered during this initial five (5) year period. After an initial request for reduction in the amount of required security has been made, each subsequent request for reduction thereafter shall be considered no more frequently than every thirty (30) months following the conclusion of the prior request, if any.

(b) The formerly self-insured employer bears the burden to persuade the commissioner the amount and form of the security, as last determined by the commissioner, is excessive and a reduction is warranted. The commissioner may consider the factors set forth in Section 5 of this administrative regulation or any other

factor the commissioner finds relevant when evaluating the formerly self-insured employer's request to reduce the amount of its required security deposit.

(5) When the employer is no longer self-insured due to the voluntary surrender of its certificate, the security required by the commissioner shall not be less than \$250,000 for the first ten (10) years following the date on which the employer ceased to be self-insured and shall not be less than \$100,000 for the eleventh through, and including, the twentieth years following the date on which the employer ceased to be self-insured.

Section 11[40]. Revocation [~~or Modification~~] of Certification. (1) A self-insured employer's certification may be revoked by the commissioner after a hearing is held.

(a) The hearing order shall set forth the grounds for revocation and set a hearing date no sooner than ten (10) business days from the date of the order.

(b) The hearing shall be conducted pursuant to Section 13 of this administrative regulation. Upon a prima facie showing by the Department of Workers' Claims of one (1) or more of the grounds set forth in subsection 2 of this section, there shall exist a rebuttable presumption that the employer's authorization should be revoked.[]

~~(1) If the executive director receives information furnishing reasonable grounds to believe that the individual self-insurer is not meeting, or may not be able to timely meet, all of its obligations arising under KRS Chapter 342 or this administrative regulation, a hearing order shall be issued to the individual self-insurer detailing the purported deficiency and setting a time and place for a hearing.]~~

(2) The commissioner [~~executive director~~] may revoke the self-insurance certification upon a finding that any of the following conditions exist:

(a) The individual self-insured employer [~~self-insurer~~] is operating in:

1. Contravention of its submitted application; or
2. In material violation of this administrative regulation;

(b) The individual self-insured employer [~~self-insurer~~] or its parental guarantor no longer has the financial stability to assure its ability to meet its obligations for the payment of workers' compensation benefits; [~~or~~]

(c) The self-insured employer [~~insurer~~] has failed or refused to provide access to the books and documents relating to the self-insurance activities of the entity.[]

(d) The self-insured employer failed to pay an assessment by the appropriate guaranty fund; or

(e) The self-insured employer failed to pay compensation provided in this chapter.

(3) When [~~if~~] the commissioner [~~executive director~~] revokes an individual self-insured employer's [~~self-insurer's~~] certification, the commissioner [~~executive director~~] shall notify either the Kentucky individual self-insurance guaranty fund or the Kentucky coal employers' self-insurance guaranty fund.[]

~~(4) Self-insurance certification may be revoked by the executive director after a hearing is held.~~

~~(a) The hearing order shall set the grounds of revocation and set a hearing date in not less than ten (10) days.~~

~~(b) The hearing shall be conducted pursuant to Section 11 of this administrative regulation.]~~

(4) [(e)] During the pendency of a hearing or appeal, the commissioner shall call the entirety of the security deposited [~~executive director may utilize the surety deposit provided~~] by the individual self-insured employer:

(a) When the commissioner has received information indicating the deposited security will not be maintained or timely replaced with other acceptable security, or

(b) When compensation is due but has not been paid by the self-insured employer. [~~self-insurer to make a payment of workers' compensation benefits which is currently due for which a payment is not being made by the individual self-insurer or its service organization.]~~

(5)(a) When the employer is no longer self-insured due to revocation of its certificate, unless the commissioner calls the

deposited security, the employer shall continue to deposit security with the commissioner in the amount and in the form last determined by the commissioner for a period no less than five (5) years from the date the employer ceased to be self-insured; no request for reduction shall be considered during this initial five (5) year period. After an initial request for reduction in the amount of required security has been made, each subsequent request for reduction thereafter shall be considered no more frequently than every thirty (30) months following the conclusion of the prior request.

(b) The formerly self-insured employer bears the burden to persuade the commissioner the amount and form of the security, as last determined by the commissioner, is excessive and a reduction is warranted. The commissioner may consider the factors set forth in Section 5 of this administrative regulation or any other factor the commissioner finds relevant when evaluating the formerly self-insured employer's request to reduce the amount of its required security deposit.

(6) When the employer is no longer self-insured due to revocation of its certificate, unless the commissioner calls the deposited security, the security required by the commissioner shall not be less than \$250,000 for the first ten (10) years following the date on which the employer ceased to be self-insured and shall not be less than \$100,000 for the eleventh through, and including, the twentieth years following the date on which the employer ceased to be self-insured.

Section 12. Default. When a self-insured employer or a formerly self-insured employer fails to meet an obligation as a self-insured employer, including the obligation to deposit acceptable security in the amount required by the commissioner, the failure to timely pay a compensation obligation to an employee injured during the employer's period of self-insurance, or the failure to pay an assessment by a guaranty fund, the commissioner shall:

(1) Call the entirety of the deposited security;

(2) Retain the security proceeds in the commissioner's possession or control until each claim for workers' compensation benefits has been fully paid, fully settled, or lapsed, so there is no possibility of further liability;

(3) Use the security proceeds to pay the compensation provided in KRS Chapter 342 in claims incurred during the employer's period of self-insurance as follows:

(a) Where the employer was a member of a guaranty fund, forward to the appropriate guaranty fund the security proceeds and order the guaranty fund to commence payment of the member's incurred compensation liabilities using the security proceeds; or

(b) Where the employer was not a member of a guaranty fund, the commissioner shall use the security proceeds to pay the employer's incurred compensation liabilities.

(4) When the commissioner determines all claims of the employer have been fully paid, fully settled, or lapsed, so there is no possibility of further liability, and the security proceeds are not exhausted, the commissioner shall pay any remaining security proceeds into the Franklin Circuit Court for determination as to whether there is an entity legally entitled to the remaining security proceeds. If no claim is made alleging entitlement to the remaining security proceeds within sixty (60) days of the payment into the court, or the court ultimately determines there is no rightful entitlement claim, the commissioner may petition the court to deposit the remaining security proceeds into the fund established pursuant to KRS 342.920.

(5) The obligations of a self-insured employer or formerly self-insured employer may be guaranteed by a parent entity by way of a fully executed form SI-01, Guarantee Agreement; the form SI-01, Guarantee Agreement, does not preclude the commissioner from calling the security nor does it preclude the commissioner from pursuing all available means to separately recover from the defaulting employer or its guarantor.

Section 13 [44]. Aggrieved Parties. (1) A person aggrieved by an action of the commissioner [~~executive director~~] may request a hearing by filing a written request with the commissioner within thirty (30) [~~executive director setting forth the basis within sixty~~

~~(60)~~ days of the action of the commissioner; the request shall set forth the specific basis for the challenge to the commissioner's action. [executive director.] Upon receipt of the written [a] request, the commissioner [executive director] shall issue a notice of hearing within ten (10) business days of receipt of the written request. The notice of hearing shall set the date, time, and place of the hearing to be held no sooner than ten (10) days after the date of the notice of hearing and no later than ninety (90) business days after the date of the notice of hearing and may provide the date, time, and place for an informal conference between the aggrieved party and the commissioner. The date and time of the hearing may be rescheduled as required upon motion by either party or upon agreement of the parties. [to be held no sooner than ten (10) days and no later than thirty (30) days after the notice.]

(2) The aggrieved person has the burden to persuade the commissioner the action taken by the commissioner should be amended or withdrawn. The aggrieved person may present evidence to support its position and to contest evidence presented by other parties.

(3) [(2)] No later than thirty (30) days after the termination of the hearing, the commissioner [executive director] shall issue a written ruling [order] addressing all matters involved at the hearing and if applicable, any further basis for his action, creating an adequate record for review. The ruling shall contain concise findings of fact and conclusions of law. The commissioner shall serve a copy of the ruling [order] upon each party. [The order shall contain a concise findings of fact and conclusions of law. The executive director's final order may revoke or modify a self-insurance certification or allow an employer to continue to self-insure subject to certain terms and conditions.]

(4) [(3)] The ruling of the commissioner [executive director] may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140.

Section 14. [42.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Self-Insurers' Guarantee Agreement, Form SI-01", (November 2005 edition);

(b) "Employer's [Employers] Application for Permission to Carry Its [His] Own Risk Without Insurance, Form SI-02", (January 2021 [2004] edition);

(c) "Employer's Application for Recertification", Form SI-02R (January 2021 edition);

(d)[(e)] "Continuous Bond, Form SI-03", (January 2004 edition); and

(e)[(d)] "Letter of Credit, Form SI-04", (January 2004 edition); and

(e) "Deposit Contract, Form SI-05", (January 2006 edition.)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department [Office] of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, [Prevention Park, 657 Chamberlin Avenue,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260 and 342.035.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: February 18, 2021

FILED WITH LRC: February 18, 2021 at 2:38 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. 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 May 31, 2021. 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: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of this administrative regulation is to establish minimum requirements for an individual employer who seeks to or is authorized to self-insure for the purpose of workers' compensation.

(b) The necessity of this administrative regulation: KRS 342.260(1) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations necessary to implement KRS Chapter 342. KRS 342.340 and 342.345 require the commissioner to establish requirements for individual self-insured employers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.340 requires every employer to secure its liability for workers' compensation by either obtaining and maintaining a policy of insurance or by depositing security after proving to the commissioner of the Department of Workers' Claims it has the financial ability to pay directly all the compensation provided in KRS Chapter 342. KRS 342.345 requires the security to be maintained with the commissioner or under the commissioner's control until each claim for workers' compensation benefits has been paid, been settled, or lapsed, so there is no possibility the employer has further liability. KRS 342.347 requires the commissioner to examine the financial condition and affairs related to workers' compensation of any individual self-insureds. KRS 342.900 through 342.920 speaks to the responsibilities of self-insured employers who are members of a guaranty fund and to the use of the security deposited with the commissioner to secure the payment of workers' compensation liabilities of those self-insured employers. This administrative regulation establishes the process that an employer must use in order to apply to self-insure, the requirements and responsibilities of an employer authorized to self-insure, the potential consequences of failing to meet those requirements and responsibilities, and the method to challenge an action by the commissioner related to those requirements and responsibilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the process that an employer must use in order to apply to self-insure, the requirements and responsibilities of an employer authorized to self-insure, the potential consequences of failing to meet those requirements and responsibilities, and the method to challenge an action by the commissioner related to those requirements and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation establishes the process that an employer must use in order to apply to self-insure, the requirements and responsibilities of an employer authorized to self-insure, the potential consequences of failing to meet those requirements and responsibilities, and the method to challenge an action by the commissioner related to those requirements and responsibilities. The amendments will clarify the process, requirements, responsibilities, challenge methodology, and address issues not contemplated or addressed in the current administrative regulation.

(b) The necessity of the amendment to this administrative

regulation: The current language was unclear regarding certain issues and failed to address other issues; the amendment is to more clearly address specific issues and to address issues left out of the current language. For example, the current regulation does not address the process and situations under which an employer may voluntarily surrender its authorization to self-insure or the responsibilities of an employer that has voluntarily surrendered its authorization to self-insure. The amendments address those issues. Likewise, the amendments clarify when an employer is in default of its obligations as a self-insured employer and the action the commissioner will take upon the employer's default in its obligations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 342.340 requires every employer to secure its liability for workers' compensation by either obtaining and maintaining a policy of insurance or by depositing security after proving to the commissioner of the Department of Workers' Claims it has the financial ability to pay directly all the compensation provided in KRS Chapter 342. KRS 342.345 requires the security to be maintained with the commissioner or under the commissioner's control until each claim for workers' compensation benefits has been paid, been settled, or lapsed, so there is no possibility the employer has further liability. KRS 342.347 requires the commissioner to examine the financial condition and affairs related to workers' compensation of any individual self-insureds. KRS 342.900 through 342.920 speaks to the responsibilities of self-insured employers who are members of a guaranty fund and to the use of the security deposited with the commissioner to secure the payment of workers' compensation liabilities of those self-insured employers. The amendments to this administrative regulation further clarify the process an employer must use in order to apply to self-insure, the requirements and responsibilities of an employer authorized to self-insure, the potential consequences of failing to meet those requirements and responsibilities, the method to challenge an action by the commissioner related to those requirements and responsibilities and address circumstances not anticipated or addressed in the current administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to employers desiring to be self-insured, to those currently authorized to self-insure, and to those formerly authorized to be self-insured.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Employers desiring to be authorized to self-insure, employers currently authorized to self-insure, and employers formerly authorized to be self-insured.

(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: Employers desiring to be authorized to self-insure will have to follow the application process as established in the amendments. Employers currently authorized to self-insure and those formerly authorized to self-insure will not be required to take new actions; however, there will be increased clarity regarding those actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments will not add additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will have clear guidance regarding the application process, the requirements and responsibilities of an employer authorized to self-insure, the potential consequences of failing to meet those requirements and responsibilities, the method to challenge an action by the commissioner related to those requirements and responsibilities and guidance regarding circumstances not anticipated or addressed in the current administrative regulation.

(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: There should be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal 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 in fees or funding is 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 or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies to all parties 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? Those governmental agencies authorized to self-insure for the purpose of workers' compensation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.0011, 342.260(1), 342.342, 342.345, 342.347, 342.900-920.

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 Department of Workers' Claims does not anticipate there will be any effect on the expenditures and revenues of a state or local government agency; however, should there be any, the change from current expenditures should be minimal.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional 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:

LABOR CABINET
Department of Workers' Claims
(Amendment)

803 KAR 25:190. Utilization review [and] Medical Bill Audit -- Medical Director -- Appeal of Utilization Review Decisions.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS 342.035(5) and (6), 342.260
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner [Executive Director] of the Department [Office] of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department [Office] of Workers' Claims, and the commissioner [executive director] may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the commissioner [Executive Director] of the Department [Office] of Workers' Claims shall promulgate administrative regulations that require each insurance carrier,

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group self-insurer and individual self-insured employer to certify to the commissioner ~~[executive director]~~ the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner ~~[executive director]~~ to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. KRS 342.035(6) allows the commissioner to promulgate regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery of payment of medical services to employees receiving medical and related benefits under KRS Chapter 342. This administrative regulation insures that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program and establishes a medical director to speed the delivery of payment of medical services to employees receiving medical and related benefits under this chapter. This administrative regulation does not abrogate the right, as provided in KRS 342.020, of an injured employee to choose his treating physician, or an employer to participate in a managed health care system.

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday or any day which is a legal holiday.

(2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.

(3) "Carrier" is defined by KRS 342.0011(6).

(4) [(2)] "Commissioner" is defined by KRS 342.0011(9).

(5) [(3)] "Denial" means a determination by the utilization reviewer that the medical treatment, proposed treatment, service, or medication [or service] under review is not medically necessary or appropriate and, therefore, payment is not recommended.

(6) "Department" means the Kentucky Department of Workers' Claims.

(7) [(4)] "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

(8) "Medical Director" means the Medical Director of the Department of Workers' Claims appointed by the Secretary.

(9) "Medically necessary" or "medical necessity" is defined in 803 KAR 25:260(12).

(10) "Medical provider" is defined in 803 KAR 25:260 Section 1(11).

(11) "Physician" is defined by KRS 342.0011(32).

(12) [(5)] "Preauthorization" is defined in 803 KAR 25:260(14). means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(13) "Secretary" means the Secretary of the Kentucky Labor Cabinet.

(14) [(6)] "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease.

(15) [(7)] "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner [executive director] by each carrier describing the procedures governing utilization review and medical bill audit activities.

(16) [(8)] "Vendor" means a person or entity which implements a utilization review and medical bill audit program for purposes of offering those services to carriers.

Section 2. Implementation. (1) The requirements established in Sections 3 through 9 of this administrative regulation shall apply to all utilization reviews and medical bill audits conducted before January 1, 2022.

(2) The requirements established in Sections 10 through 18 of this administrative regulation shall apply to all utilization reviews and medical bill audits conducted on or after January 1, 2022.

Section 3. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:
(a) A utilization reviewer is appropriately qualified;
(b) Treatment rendered to an injured worker is medically

necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy complies with KRS Chapter 342 and applicable administrative regulations;

(b) A medical bill auditor is appropriately qualified; and

(c) A statement for medical services is not disputed without reasonable grounds.

Section 4 [3]. Utilization Review and Medical Bill Audit Plan Approval. (1) A carrier shall fully implement and maintain a utilization review and medical bill audit program.

(2) A carrier shall provide to the commissioner ~~[executive director]~~ a written plan describing the utilization review and medical bill audit program. The commissioner ~~[executive director]~~ shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner ~~[executive director]~~ for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner ~~[executive director]~~.

(4) A carrier who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner ~~[executive director]~~ of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years ~~[, or until December 31, 2000, whichever is later].~~

(a) At least ninety (90) calendar days prior to the expiration of the period of approval, a carrier or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner ~~[executive director]~~ shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

Section 5 [4]. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner ~~[executive director]~~ shall include the following elements:

(1) A description of the process, policies and procedures whereby decisions shall be made;

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;

(4) A description of the qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit and the manner in which the personnel shall be involved in the review process;

(5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096;

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;

(9) An assurance that a database shall be maintained, which shall:

(a) Record:

1. Each instance of utilization review;

2. Each instance of medical bill audit;

3. The name of the reviewer;

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4. The extent of the review;
 5. The conclusions of the reviewer; and
 6. The action, if any, taken as the result of the review;
- (b) Be maintained for a period of at least two (2) years; and
- (c) Be subject to audit by the commissioner [executive director], or his agent, pursuant to KRS 342.035(5)(b);
- (10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to an interested party at least five (5) days per week, forty (40) hours per week during normal business hours;
- (11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and
- (12) An assurance that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making. [~~An assurance that the acute low back pain practice parameter adopted by the executive director pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for evaluating an applicable low back claim. Additional medical guidelines which may be adopted by the executive director pursuant to KRS 342.035(8)(a) shall be incorporated in a utilization review plan.~~]

Section 6 [5]. Claim Selection Criteria. (1) Unless the carrier, in good faith, denies the claim as noncompensable, medical services reasonably related to the claim shall be subject to utilization review if:

- (a) A medical provider requests preauthorization of a medical treatment or procedure;
 - (b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;
 - (c) The total medical costs cumulatively exceed \$3000;
 - (d) The total lost work days cumulatively exceed thirty (30) days; or
 - (e) An arbitrator or administrative law judge orders a review.
- (2) If applicable, utilization review shall commence when the carrier has notice that a claims selection criteria has been met.
- (a) The following requirements shall apply if preauthorization has been requested:
1. The initial utilization review decision shall be communicated to the medical provider and employee within two (2) business [working] days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional business [working] days.
 2. The requested information shall be tendered by the medical provider within ten (10) business [working] days.
 3. The initial utilization review decision shall be rendered within two (2) business [working] days following receipt of the requested information.
 - (b) The following requirements shall apply if retrospective utilization review occurs:
 1. The initial utilization review decision shall be communicated to the medical provider and employee within ten (10) calendar days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional business [working] days.
 2. The requested information shall be tendered by the medical provider within ten (10) business [working] days.
 3. The initial utilization review decision shall be rendered within two (2) business [working] days following receipt of the requested information.
 - (3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be provided within twenty-four (24) hours following a request for expedited review.
 - (4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to

KRS 342.020(1). The thirty (30) day period shall commence on the date of the final utilization review decision.

- (5) Each medical bill audit shall be initiated within seven (7) calendar days of receipt to assure:
- (a) Compliance with applicable fee schedules;
 - (b) Accuracy; and
 - (c) That a physician has been designated in accordance with 803 KAR 25:096.
- (6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 7 [6]. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. A physician, registered nurse, licensed practical nurse, medical records technician or other personnel, who through training and experience is qualified to issue decisions on medical necessity or appropriateness, shall issue the initial utilization review approval.

(2) A physician shall issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 8 [7]. Written Notice of Denial. (1) Following initial review, a written notice of denial shall:

- (a) Be issued to both the medical provider and the employee in a timely manner but no more than ten (10) calendar days from the initiation of the utilization review process;
- (b) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and
- (c) Contain:
 1. A statement of the medical reasons for denial;
 2. The name, state of licensure and medical license number of the reviewer; and
 3. An explanation of utilization review reconsideration rights.
- (2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 9 [8]. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review.

(a) A request for reconsideration of the initial utilization review decision shall be made by an aggrieved party within fourteen (14) calendar days of receipt of a written notice of denial.

(b) Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written reconsideration decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION".

(d) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(2)(a) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area, or a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095 has not previously reviewed the matter, an aggrieved party may request further review by:

1. A board eligible or certified physician in the appropriate specialty or subspecialty; or
2. A chiropractor qualified pursuant to KRS 312.200(3) and 201

KAR 21:095.

(b) A written decision shall be rendered within ten (10) calendar days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".

(3) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within fourteen (14) calendar days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 10. Utilization Review and Medical Bill Audit Program.

(1) The utilization review program shall assure that:

(a) A utilization reviewer is appropriately qualified;

(b) Treatment rendered to an injured worker is medically necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy complies with KRS Chapter 342 and applicable administrative regulations;

(b) A medical bill auditor is appropriately qualified; and

(c) A statement for medical services is not disputed without reasonable grounds.

Section 11. Utilization Review and Medical Bill Audit Plan Approval. (1) A carrier shall fully implement and maintain a utilization review and medical bill audit program.

(2) A carrier shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner.

(4) A carrier who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years.

(a) At least ninety (90) calendar days prior to the expiration of the period of approval, a carrier or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

(6) A carrier, who contracts with an approved vendor for utilization review services, shall provide annually to the commissioner summaries of the number of utilizations reviews, waivers per KRS 342.035(5)(c), utilization review approvals for treatment, utilization review denials for treatment and appeals to the medical director. Such annual reports of the approved vendor shall be filed with the Department by August 1 for the preceding fiscal year ending June 30.

Section 12. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

(1) A description of the process, policies and procedures

whereby decisions shall be made:

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;

(4) A description of the qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit and the manner in which the personnel shall be involved in the review process;

(5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096;

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;

(9) An assurance that a database shall be maintained, which shall:

(a) Record:

1. Each instance of utilization review;

2. Each instance of medical bill audit;

3. The name of the reviewer;

4. The extent of the review;

5. The conclusions of the reviewer; and

6. The action, if any, taken as the result of the review;

(b) Be maintained for a period of at least two (2) years; and

(c) Be subject to audit by the commissioner, or his agent, pursuant to KRS 342.035(5)(b);

(10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to an interested party at least five (5) days per week, forty (40) hours per week during normal business hours;

(11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and

(12) An assurance that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making.

Section 13. Claim Selection Criteria and Process.

(1) Unless the medical payment obligor, in good faith, denies the claim as noncompensable or waives utilization review pursuant to KRS 342.035(5)(c), medical services reasonably related or asserted to be related to the claim shall be subject to utilization review if:

(a) A medical provider requests preauthorization of a medical treatment or procedure;

(b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;

(c) The total medical costs cumulatively exceed \$1,000; or

(d) The total lost work days cumulatively exceed fifteen (15) days.

(2) Utilization review shall commence when the medical payment obligor has notice that a claims selection criteria has been met. The medical payment obligor may waive utilization review pursuant to KRS 342.035(5)(c) within two (2) business days of such notice. Failure by the medical payment obligor to waive and communicate its waiver to the employee and medical provider or initiate its utilization review process within two (2) business days shall result in the medical payment obligor paying for the subject medical services pursuant to the appropriate fee schedules.

(a) The following requirements shall apply if preauthorization has been requested and utilization review has not been waived:

1. The utilization review decision shall be rendered and

communicated to the medical provider and employee within two (2) business days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional business days.

2. The requested information shall be tendered by the medical provider within five (5) business days.

3. The utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The utilization review decision shall be rendered and communicated to the medical provider and employee within five (5) business days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional business days.

2. The requested information shall be tendered by the medical provider within five (5) business days.

3. The utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be rendered and communicated within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period for paying medical expenses shall commence on the date of the utilization review decision.

(5) Each medical bill audit shall be initiated within seven (7) calendar days of receipt to assure:

(a) Compliance with applicable fee schedules;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4).

Section 14. Utilization Review and Medical Bill Audit Personnel Qualifications.

(1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. A physician, registered nurse, licensed practical nurse, medical records technician or other personnel, who through training and experience is qualified to issue decisions on medical necessity or appropriateness, shall issue the initial utilization review approval.

(2) A physician shall issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 15. Written Notice of Denial.

(1) Following utilization review, a written notice of denial shall:

(a) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and

(b) Contain:

1. A statement of the medical reasons for denial;

2. The name, state of licensure and medical license number of the reviewer; and

3. An explanation of utilization appeal rights with instructions on how to proceed with an appeal.

(2) The Department shall develop and provide a form on its website that a medical payment obligor may use to comply with Section 15 (1) above.

(3) A copy of the written notice of denial along with the mailing address, telephone number, and, if known, the email address of the employee and medical provider whose treatment, recommended treatment, or prescribed medication is being denied shall be sent by electronic mail to the medical director on the same day that the notice of denial is rendered and communicated to that medical provider and employee. The medical director shall then immediately notify the employee and that medical provider of the actions required to appeal the utilization review denial at no cost to the employee.

(4) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 16. Medical Director.

(1) The Secretary shall appoint a medical director to:

(a) Process appeals of utilization review decisions and medical bill audit decisions rendered pursuant to this regulation, and

(b) At least annually, review and advise the commissioner and the Secretary on the effectiveness of the Medical Fee Schedule for Physicians, the Treatment Guidelines and the Pharmaceutical Formulary in reducing costs and speeding the delivery of medical services to employees receiving medical benefits under KRS Chapter 342.

(2) The medical director shall be a Kentucky licensed physician in good standing with the Kentucky Board of Medical Licensure.

(3) The medical director may, when appropriate, seek the assistance of other physicians to assist or perform any tasks outlined within this regulation.

(4) The medical director shall chair a Workers' Compensation Medical Advisory Committee to provide advice on issues related to the medical treatment of injured workers. The medical director may request the committee to advise on the medical aspects of the Department's various programs in advancing the goal of ensuring that all injured employees receive superior quality and cost efficient treatment to facilitate recovery from injury and a swift, safe return to the workforce.

(a) In addition to the medical director serving as chair, the commissioner shall serve on the Workers' Compensation Medical Advisory Committee and may appoint the following to the Workers' Compensation Medical Advisory Committee: deputy commissioner, and a representative for employers, employees, labor unions, insurance, self-insured, occupational medicine, chiropractic, orthopedics, neurosurgery, psychiatric, pain management rehabilitation, pain management, emergency medicine and pharmacy.

(b) No less than annually, the Workers' Compensation Medical Advisory Committee shall provide the commissioner and Secretary with a report concerning the activity, effectiveness and impact of the medical director and the utilization review programs on the delivery of payment of medical services to injured employees.

Section 17. Appeals of Utilization Review Decisions.

(1) Upon receipt of a written notice of denial of treatment subject to utilization review, the employee or medical provider whose treatment, recommended treatment, or prescribed medication, is being denied may appeal the utilization review decision to the medical director.

(2) The employee or medical provider whose treatment, recommended treatment, or prescribed medication is being denied shall have thirty (30) calendar days from receipt of the written notice of denial to appeal the utilization review decision to the medical director. The medical director may extend the time to appeal for good cause.

(3) Failure to appeal to the medical director shall result in the utilization review decision having preclusive effect as to the reasonableness and necessity of the treatment.

(4) An appeal to the medical director shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period to pay the approved medical expenses shall commence on the date of the medical director's written determination or the date on which the parties reach agreement regarding disputed treatment.

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(5) The Department shall charge a fee of \$400.00 for each appeal submitted to the medical director. The fee shall be paid by the medical payment obligor no later than fifteen (15) calendar days following the date of the appeal to the medical director. Failure to pay the fee shall constitute a failure to complete a necessary step in the administrative review process and be construed as an admission by the employer that the denial was in error and the medical director should find accordingly. Failure to pay the fee may also result in assessment of a civil penalty pursuant to KRS 342.990(7)(e).

(6) Within five (5) calendar days of the appeal to the medical director, the medical payment obligor may cause the appeal to be dismissed by providing notice to the medical director, medical provider whose treatment, recommended treatment, or prescribed medication is being denied and employee. With such a dismissal, the medical payment obligor shall authorize the payment of the questioned services pursuant to the appropriate fee schedule. If such dismissal occurs, no fee as required by this regulation shall be due, or if paid, the fee shall be refunded to the medical payment obligor.

(7) Upon receipt of an appeal request by an employee or medical provider whose treatment or recommended treatment is being denied:

(a) The medical director shall conduct the utilization review appeal.

(b) The medical director may contact the medical provider whose treatment, recommended treatment, or prescribed medication is being denied for the purpose of obtaining any necessary missing information.

(c) The medical director shall set a date on which all relevant information shall be due to the medical director.

(d) The medical director shall determine the medical necessity of the treatment, recommended treatment, or prescribed medication within fourteen (14) calendar days after receipt of all necessary information by the medical director.

(e) Upon determination that any or all of the treatment, recommended treatment, or prescribed medication is reasonable and necessary, the medical director shall plainly state the reasons for each approval in a written determination.

(f) Upon determination that any or all of the treatment, recommended treatment, or prescribed medication is not reasonable and necessary, the medical director shall plainly state the reasons for each denial in a written determination.

(g) The medical director shall transmit the written determination to the medical provider whose treatment, recommended treatment, or prescribed medication, is being denied, the employee, the employer and the medical payment obligor by facsimile, electronic mail or the United States Postal Service within fourteen (14) calendar days after receipt of all necessary information by the medical director.

(h) Additionally, upon a determination by the medical director that there was no reasonable basis upon which to deny the treatment, recommended treatment, or prescribed medication, or that the medical payment obligor failed to follow the required utilization review procedure, the medical director shall request that sanctions be imposed on the medical payment obligor by directing the employee's or physician's costs of the appeal, including reasonable attorney's fees, be paid by the medical payment obligor. Whether or not to impose the aforementioned sanctions is within the discretion of the commissioner or administrative law judge to whom the request for sanctions was addressed.

(i) If at any time during the appeal with the medical director, the medical payment obligor raises work relatedness, causation or non-compensability issues, the parties shall be advised by the medical director that resolution of these issues requires a filing of an application for adjustment of claim or Form 112, Medical Dispute, whichever is appropriate. The medical director, however, shall continue with the appeal and issue a written determination of the reasonableness and necessity of the proposed medical treatment consistent with this regulation.

(8) A determination by the medical director of the reasonableness and necessity of the treatment, recommended treatment, or prescribed medication shall remain effective for six

(6) months from the date of the written determination of the medical director, unless a change in condition is shown by objective medical findings.

(9) If the medical director's determination is to approve the medical treatment, the medical payment obligor shall pay for the treatment, recommended treatment, or prescribed medication within the thirty (30) day time period set forth in KRS 342.020(4) unless a Form 112, Medical Dispute, is timely filed.

(10) If a party disagrees with the medical director's written determination, the aggrieved party may file a Form 112, Medical Dispute, and proceed in accordance with 803 KAR 25:012.

(11) The filing of a Form 112, Medical Dispute, shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4) until such time as the reasonableness and necessity of the proposed medical treatment is decided by an administrative law judge.

(12) Failure to file a Form 112, Medical Dispute, within fourteen (14) calendar days shall result in the written determination of the medical director having preclusive effect as to the reasonableness and necessity of the treatment that is the subject of the medical director's determination.

Section 18. Reconsideration and Appeals of Medical Bill Audit Decisions. A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within fourteen (14) calendar days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT-RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

(e) Any party may appeal the "MEDICAL BILL AUDIT RECONSIDERATION DECISION" to the medical director pursuant to Section 17 of this regulation.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: February 18, 2021

FILED WITH LRC: February 18, 2021 at 2:38 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. 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 May 31, 2021. 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: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation insures that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program and establishes a medical director to speed the delivery of payment of medical services to employees receiving medical and related benefits under this chapter. This administrative regulation does not abrogate the right, as provided in KRS 342.020, of an injured employee to choose his treating physician, or an employer to participate in a managed health care system.

(b) The necessity of this administrative regulation: To provide guidance to insurance carriers, group self-insurers, and individual self-insured employers with respect to utilization review, medical billing, and appeals to the medical director.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. KRS 342.035(6) allows the commissioner to promulgate regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery of payment of medical services to employees receiving medical and related benefits under KRS Chapter 342.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps to ensure timely benefits to employees through the use of utilization review. If the employee or medical provider disagrees with a utilization review decision, they are afforded the opportunity for a review by a neutral third party, the medical director. Because the medical director will be the one to decide appealed medical disputes, the resolution of appeals will be more consistent and the delivery of medical benefits more efficient.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds a new position and amends the method by which utilization review appeals are adjudicated.

(b) The necessity of the amendment to this administrative regulation: The medical director will more effectively assist the department in fulfilling its medical-related responsibilities. Further, the amendment to this administrative regulation creates a medical advisory committee, which includes stakeholders from the various medical disciplines, to provide input on medical matters.

(c) How the amendment conforms to the content of the authorizing statutes: The commissioner is required to promulgate administrative regulations necessary to govern the medical provider utilization review activities conducted by insurance carriers, self-insured groups, and self-insured employers. The amendment to this administrative regulation adds a person with medical expertise to help assure injured employees receive timely and appropriate medical benefits.

(d) How the amendment will assist in the effective administration of the statutes: The addition of a medical director will help streamline medical decisions and help assure injured employees receive reasonable and necessary medical treatment in a timely fashion.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Insurance carriers, self-insured groups, and self-insured employers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to the administrative regulation directs the path taken by a utilization review appeal when appealed to the medical director.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The medical payment obligor will pay \$400 for each appeal taken to the medical director.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Payment obligors will no longer be required to perform an in-house review of the requested medical treatment, which required the hiring of an independent physician to perform the review. The employee and medical provider will be afforded an independent review of requested medical treatment.

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

(a) Initially: \$350,000.

(b) On a continuing basis: \$350,000 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal 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: The Department anticipates the fees will offset implementation costs.

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

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies 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? Those governmental agencies constituting a medical payment obligor for the purpose of workers' compensation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035(5) and (6), 342.260.

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. Without knowing the number of utilization review appeals that will occur, it is impossible to estimate the effect on expenditures.

(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 anticipated that approximately \$400,000 will be generated.

(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 anticipated that approximately \$400,000 will be generated in subsequent years.

(c) How much will it cost to administer this program for the first year? Approximately \$350,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$350,000 per year.

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: It is anticipated that the costs to administer the medical director appeal process will be offset by the fees generated so that the overall impact will be revenue neutral.

**LABOR CABINET
Department of Workers' Claims
(Amendment)**

803 KAR 25:220. Guaranty funds.

RELATES TO: KRS 342.900-342.912

STATUTORY AUTHORITY: KRS 342.260, 342.900-342.912

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the commissioner~~[executive director]~~ to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.906(4) requires the commissioner~~[executive director]~~ to promulgate administrative regulations to establish a plan of operation for each guaranty fund created pursuant to KRS 342.906. This administrative regulation establishes the requirements for a guaranty fund written plan of operation and regulates the powers and duties of the guaranty funds.

Section 1. ~~[Definition. "Kentucky coal employers' self-insurance fund" means the self-insurance fund that consists of self-insured employers engaged in the severance or processing of coal, excluding the transportation or processing of coal by the end user.~~

~~Section 2.] Plan of Operation. (1) Each guaranty fund shall submit to the commissioner~~[executive director]~~ a plan of operation and each amendment necessary to assure the fair, reasonable, and equitable administration of the fund. The plan of operation and amendments shall become effective upon approval in writing by the commissioner~~[executive director]~~.~~

~~(2) If a guaranty fund fails to submit an acceptable plan of operation by March 1, 1997, or fails to submit a suitable amendment to the plan, the commissioner~~[executive director]~~ may, after notice and hearing, adopt or amend a plan of operation for the guaranty fund. The plan adopted or amended by the commissioner~~[executive director]~~ shall continue in force until modified by the commissioner~~[executive director]~~ or superseded by a plan submitted by the guaranty fund and approved by the commissioner~~[executive director]~~.~~

~~(3) A member of a guaranty fund shall comply with the plan of operation.~~

~~(4) The plan of operation shall establish:~~

~~(a) Procedures whereby all the powers and duties of the guaranty fund established by KRS Chapter 342 shall be performed;]~~

~~(b) Procedures to prorate a security posted by the insolvent self-insurer and turned over to the guaranty fund, by allocating the security to reserves for injuries incurred before and after March 1, 1997.]~~

~~(b) [(e)] Procedures for the collection of assessments, the sound investment, and disbursement of assets of the guaranty fund;~~

~~(c) [(d)] The amount and method of reimbursing a member of the board of directors for attendance at a board meeting or other reasonably necessary function of the guaranty fund;~~

~~(d) [(e)] Procedures by which a claim shall be filed with the guaranty fund and acceptable forms for proof of a claim. Notice of a claim against the insolvent self-insurer to a bankruptcy court or other court of competent jurisdiction shall be deemed notice to the guaranty fund;~~

~~(e) [(f)] A regular place and time for a meeting of the board of directors;~~

~~(f) [(g)] Procedures for a record to be kept of a financial transaction of the guaranty fund, its agents, or the board of directors;~~

~~(g) [(h)] Procedures for the expeditious and informal resolution of a member grievance;~~

~~(h) [(i)] Additional provisions necessary or proper for the execution of the powers and duties of the guaranty fund.~~

Section 3. Powers and Duties of the Guaranty Funds. (1) Each guaranty fund shall:

(a) Be ~~[the insurer]~~ required to pay the workers' compensation benefits incurred during the period in which an insolvent self-insurer was a member of the guaranty fund, subject to the limitations established by KRS 342.908(4).]

~~1. For a group self-insurer, membership in the Kentucky group self-insurance fund shall continue until coverage of every group member has been terminated by normal expiration or order of a court of competent jurisdiction.]~~

~~1. [2.] For an individual self-insurer, membership in a guaranty fund shall continue until the employer:~~

~~a. Becomes an insolvent self-insurer, as defined in KRS 342.901(1); or~~

~~b. Secures coverage through an authorized carrier or self-insurance group;~~

~~(b) Have the rights, duties, and obligations of the insolvent self-insurer, except as otherwise provided by law;~~

~~(c) Determine the outstanding liabilities of the insolvent self-insurer and establish actuarily~~[actuarially]~~ responsible reserves for an incurred claim. ~~[The reserves shall be applied pro rata to a claim incurred before and after March 1, 1997. The guaranty fund shall:]~~~~

~~1. When an insolvent self-insurer's security has been exhausted, the guaranty fund shall not [Not] be responsible for payment of [a deficiency between the reserves so calculated and the total claims liability for] a claim incurred prior to March 1, 1997; and~~

~~2. When an insolvent self-insurer's security has been exhausted, the guaranty fund shall pay [Pay] a claim [liability] incurred on or after March 1, 1997;~~

~~(d) Establish a mechanism consistent with 803 KAR 25:021, Section 12(4), for a distribution of security proceeds after the commissioner has determined that every claim for which an insolvent self-insurer is responsible has been fully paid, fully settled, or lapsed so that the insolvent self-insurer has no possibility of additional liability. ~~[return to the insolvent self-insured or the individual or entity posting the surety the remaining surety if there is a surplus.]~~~~

~~(e) Take possession of the books and records of the insolvent self-insurer necessary to fulfill the duties of the guaranty fund;~~

~~(f) Investigate claims brought against the guaranty fund and adjust, compromise, settle and pay workers' compensation benefits which might otherwise be delayed or terminated due to the failure of an insolvent self-insurer to meet its obligations under KRS Chapter 342;~~

~~(g) Notify a claimant of the insolvent self-insurer of his rights through the guaranty fund;~~

~~(h) Reimburse each servicing facility for an obligation of the guaranty fund paid by the facility and for an expense incurred by the facility while handling a claim on behalf of the guaranty fund; and~~

~~(i) Notify the commissioner~~[executive director]~~ of information indicating that a member may be insolvent or in a financial condition jeopardizing payment of claims.~~

~~(2) A guaranty fund may:~~

~~(a) Appear in, defend, and appeal an action on a claim brought against the guaranty fund;~~

~~(b) Employ or retain persons necessary to handle claims and perform other duties of the guaranty fund;~~

~~(c) Borrow funds necessary to effect the purposes of KRS Chapter 342 and this administrative regulation in accordance with the fund's plan of operation;~~

~~(d) Sue or be sued;~~

~~(e) Negotiate and become a party to a contract necessary to carry out the purpose of KRS Chapter 342 and this administrative regulation; and~~

~~(f) Perform an act necessary to effectuate the purpose of the~~

guaranty fund.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: February 18, 2021

FILED WITH LRC: February 18, 2021 at 4:28 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on May 25, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. 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 May 31, 2021. 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: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a guaranty fund written plan of operation and regulates the powers and duties of the guaranty funds.

(b) The necessity of this administrative regulation: KRS 342.260 requires the commissioner to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.906(4) requires the commissioner to promulgate administrative regulations to establish a plan of operation for each guaranty fund created pursuant to KRS 342.906.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides guidance regarding the powers and duties of a guaranty fund and establishes the requirements for a guaranty fund's written plan of operation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the minimum requirements for a guaranty fund's written plan of operation.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation has not been amended since 1997. The amendment updates the administrative regulation to match current practices.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been amended since 1997. The amendment updates the administrative regulation to match current practices and to match the Department's current structure.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 342.906 requires the commissioner to promulgate administrative regulations to establish a plan of operation for each guaranty fund. The amendment matches the current expectation for those plans.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to a guaranty fund in drafting or amending its plan of operation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky individual self-insurance guaranty fund and the Kentucky coal employers self-insurance fund.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: It is unlikely either guaranty fund will have to take any action to comply with the amendments unless its plan of operation needs updated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments will not add additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will have clear guidance regarding their written plan of operation.

(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: There should be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal 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 in fees or funding is 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 or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies to all parties 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? Pursuant to KRS 342.904, public-sector self-insured employers are specifically exempted from the provisions of KRS 342.900 to 342.912.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.260, 342.900-912.

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 should be no effect on the expenditures and revenues of a state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional 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:

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

810 KAR 2:001. Definitions for 810 KAR Chapter 2.

RELATES TO: KRS Chapter 230

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 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" is defined in 810 KAR 6:001. [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.]~~

(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 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 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 is not a mutuel entry.

(21) "Foul" means an action by a jockey or driver that tends to hinder another jockey, driver, 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" is defined in 810 KAR 6:001. [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) 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 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

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association for the conduct of live horse racing that:

- (a) Begins at 10 a.m. of the first racing day; and
 - (b) Extends 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" is defined in 810 KAR 6:001. ~~[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, a licensed premises, 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.
- (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 pari-mutuel 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 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[~~(49)~~].
- (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[~~(24)~~].

(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.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: February 15, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on May 24, 2021 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 2.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 2 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 2.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 2.

(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 alter the definitions of "commission," and "licensed premises," as well as "pari-mutuel wagering, mutuel wagering, or pari-mutuel system of wagering," so

that they cross-reference the definitions for those terms found in 810 KAR 6:001. In addition, this amendment includes a variety of other minor language modifications that are intended to ensure clarity and consistency throughout the Commission's authorizing statutes and accompanying regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure consistency and a lack of conflict between the Commission's regulations and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the eight currently-licensed racing associations in the Commonwealth and any applicant for a racing association license.

(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: No additional action is required at this time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation, as amended, is not anticipated to generate any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted 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? The Kentucky Horse Racing Commission 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 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 3:001. Definitions for 810 KAR Chapter 3.

RELATES TO: KRS Chapter 230

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes[grants] the Kentucky Horse Racing Commission (the "commission")~~[commission—the authority—to]~~ regulate conditions under which horse racing is 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. This administrative regulation defines the terms used in 810 KAR Chapter 3.

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) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.

(3) "ARCI" means the Association of Racing Commissioners International.

(4) "Association" is defined by KRS 230.210~~[(5)]~~.

(5) "Authorized agent" means in flat racing any 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.

(6) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 810 KAR 4:050 and 810 KAR 5:030

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- (7) "Commission" is defined in 810 KAR 6:001. [means:
(a) The Kentucky Horse Racing Commission as defined by KRS 230.210(16) 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) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.
- (10) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.
- (11) "Directive" means an official order issued by the commission or the executive director.
- (12) "Draw" means the process of determining post positions by lot.
- (13) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.
- (14) "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.
- (15) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.
- (16) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.
- (17) "Equipment" means in flat racing 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.
- (18) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.
- (19) "Ineligible" means a horse or person not qualified under KAR Title 810 or conditions of a race to participate in a specified racing activity.
- (20) "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.
- (21) "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.
- (22) "Lessee" means a licensed owner whose interest in a horse is a leasehold.
- (23) "Licensee" means an individual, firm, association, partnership, corporation, limited liability company, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.
- (24) "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. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.
- (25) "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.
- (26) "Nominal change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of less than five (5) percent of the equity securities or other ownership interest of a partnership, association, corporation, limited liability company, or other legal entity holding a license issued by the commission.
- (27) "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.
- (28) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" is defined in 810 KAR 6:001.[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.]

- (29) "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.
- (30) "Purse" means the gross cash portion of the prize for which a race is run.
- (31) "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.
- (32) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.
- (33) "Result" means the part of the official order of finish in a race used to determine the parimutuel payoff of pari-mutuel pools.
- (34) "Ruled off" means denial of entrance to premises of any association under jurisdiction of the commission.
- (35) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.
- (36) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race.
- (37) "Simulcasting" is defined by KRS 230.210[(49)].
- (38) "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.
- (39) "Substantial change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of five (5) percent or more of the equity securities or other ownership interest of a partnership, association, corporation, limited liability company, or other legal entity holding a license issued by the commission.
- (40) "Suspended" means withdrawal of racing privileges by the stewards or commission.
- (41) "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.
- (42) "USTA" means the United States Trotting Association.
- (43) "Workout" means in flat racing 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.
- (44) "Year" means twelve (12) consecutive months beginning with January and ending with December.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: February 15, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at May 24, 2021 at 9:00 a.m. at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway,

VOLUME 47, NUMBER 10– APRIL 1, 2021

Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email Jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 3.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 3 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 3.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 3.

(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 alter the definitions of "commission" and "pari-mutuel wagering, mutuel wagering, or pari-mutuel system of wagering," so that they cross-reference the definitions for those terms found in 810 KAR 6:001. In addition, this amendment includes a variety of other minor language modifications that are intended to ensure clarity and consistency throughout the Commission's authorizing statutes and accompanying regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure consistency and a lack of conflict between the Commission's regulations and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the eight currently-licensed racing associations in the Commonwealth and any applicant for a racing association license.

(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: No additional action is required at this time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This

regulation, as amended, is not anticipated to generate any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted 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? The Kentucky Horse Racing Commission 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 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 4:001. Definitions for 810 KAR Chapter 4.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) ~~authorizes[grants]~~ the Kentucky Horse Racing Commission ~~("commission")~~~~[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 Kentucky~~[this state]~~. This administrative regulation defines the terms used in 810 KAR Chapter 4.

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 that 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) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.

(4) "Also eligible" means in flat racing 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.

(5) "Appeal" means a request for the commission to investigate, consider, and review any decision or ruling of a steward ~~[or judge]~~ or official of a meeting.

(6) "Arrears" means all 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.

(7) "Association" is defined by KRS 230.210~~[(5)]~~.

(8) "Authorized agent" means in flat racing any 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.

(9) "Calendar days" means consecutive days counted irrespective of number of racing days.

(10) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with ~~810~~~~[814]~~ KAR 4:050.

(11) "Closing" means the time published by the association after which entries for a race are not accepted by the racing secretary.

(12) "Coggins test" means a blood test used to determine if a horse is positive for Equine Infectious Anemia.

(13) "Commission" ~~is defined in 810 KAR 6:001.~~ ~~[means:~~

~~(a) The Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; and~~

~~(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.]~~

(14) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(15) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(16) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(17) "Declaration" means 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 810 KAR 4:030.

(18) "Directive" means an official order issued by the commission or the executive director.

(19) "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;

(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~~[-judges,]~~ or the commission revising the order of finish of a race.

(21) "Draw" means the process of determining post positions by lot.

(22) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(23) "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.

(24) "Field" or "mutuel field" means a single betting interest, which is not a mutuel entry, involving more than one (1) horse.

(25) "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.

(26) "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.

(27) "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.

(28) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(29) "Ineligible" means a horse or person not qualified under Title 810 KAR or conditions of a race to participate in a specified racing activity.

(30) "Inquiry" means an investigation by the stewards ~~[or judges]~~ of a contest prior to declaring the result of the contest official.

(31) "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.

(32) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(33) "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.

(34) "Maiden" means in flat racing, a horse that has never won a race at a recognized meeting in any country.

(35) "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. A meeting begins at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(36) "Month" means calendar month.

(37) "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.

(38) "Nominator" means the person in whose name a horse is entered for a stakes race.

(39) "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.

(40) "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards [or judges].

(41) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(42) "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.

(43) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" ~~is defined in 810 KAR 6:001. [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.]~~

(44) "Post" means the starting point of a race.

(45) "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.

(46) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(47) "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.

(48) "Purse" means the gross cash portion of the prize for which a race is run.

(49) "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.

(50) "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.

(51) "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.

(52) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(53) "Recognized meeting" means any meeting with regularly scheduled live horse races, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, and conducted with the applicable breed registry.

(54) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(55) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(56) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(57) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race.

(58) "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.

(59) "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(60) "Stakes" mean all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as required by the conditions of the race, with the fees to be included in the purse.

(61) "Stakes race" means a race that closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse

(62) "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.

(63) "Steward" means a duly appointed racing official with powers and duties established in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(64) "Subscription" means nomination or entry of a horse in a stakes race.

(65) "'Suspended" means withdrawal of racing privileges by the stewards or commission.

(66) "Thoroughbred racing" is defined by KRS 230.210[~~(24)~~].

(67) "Tote" or "tote board" means the totalizator.

(68) "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(69) "Walkover" means a race in which the only starter or all starters represent single ownership.

(70) "Weigh in" means in flat racing the presentation of a jockey to the clerk of scales for weighing after a race.

(71) "Weigh out" means in flat racing the presentation of a jockey to the clerk of scales for weighing prior to a race.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: February 15, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at May 24, 2021 at 9:00 a.m. at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511 via Zoom. 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 11:59 p.m. on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 4.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 4 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 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 alter the definitions of "commission" and "pari-mutuel wagering, mutuel wagering, or pari-mutuel system of wagering," so that they cross-reference the definitions for those

terms found in 810 KAR 6:001. In addition, this amendment includes a variety of other minor language modifications that are intended to ensure clarity and consistency throughout the Commission's authorizing statutes and accompanying regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure consistency and a lack of conflict between the Commission's regulations and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the five currently-licensed thoroughbred racing associations in the Commonwealth and any applicant for a thoroughbred, flat, and/or steeplechase racing association license.

(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: No additional action is required at this time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation, as amended, is not anticipated to generate any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted 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? The Kentucky Horse Racing Commission 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 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

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

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

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 conditions under which ~~standardbred~~~~[thoroughbred]~~ racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to promulgate necessary and reasonable administrative regulations establishing 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.

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(5) "ARCI" means the Association of Racing Commissioners 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" is defined in 810 KAR 6:001. ~~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 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 driver, ~~[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" is defined in 810 KAR 6:001. ~~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;~~

~~(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.]~~

(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 at 10 a.m. of the first racing day; and
- (b) Extends 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.

(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

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responsible for the horse.

(47) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" ~~is defined in 810 KAR 6:001. [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, a licensed premises, 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 pari-mutuel pools.

(60) "Rulings" means all determinations, decisions, or orders of the ~~judges~~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~~[(49)]~~.

(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) 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.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: February 15, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on May 24, 2021, at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 5 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 5.

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

(a) How the amendment will change this existing administrative regulation: This amendment will alter the definitions of "commission," and "licensed premises," as well as "pari-mutuel wagering, mutuel wagering or pari-mutuel system of wagering," so that they cross-reference the definitions for those terms found in 810 KAR 6:001. In addition, this amendment includes a variety of other minor language modifications that are intended to ensure clarity and consistency throughout the Commission's authorizing statutes and accompanying regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure

consistency and a lack of conflict between the Commission's regulations and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear, thereby reducing the possibility of any confusion.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the three currently-licensed standardbred racing associations in the Commonwealth and any applicant for a standardbred racing association license.

(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: No additional action is required at this time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation, as amended, is not anticipated to generate any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted 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? The Kentucky Horse Racing Commission 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 230.215, 230.260, 230.225, 230.261, 230.361,

and 230.370.

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 5:080. Kentucky Proud Series [Harness racing at county fairs].

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.310, 230.398

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.398

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission (the "commission") to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.398 authorizes the commission to promulgate administrative regulations governing the conduct of county fair races, branded as the "Kentucky Proud Series." This administrative regulation establishes conditions, purses, and payments in races conducted as part of the Kentucky Proud Series in which funds for purses are provided by the commission, and regulates eligibility for participation in the Kentucky Proud Series [harness racing at county fairs].

Section 1. Eligibility. A horse is eligible to participate in a two (2) or three (3) year old Kentucky Proud Series stakes race [at a county fair] if the:

- (1) The horse is a two (2) year old or a three (3) year old that is "Kentucky-bred" as defined in 810 KAR 7:040;
(2) All owners of the participating horse are current members of the Kentucky Colt Racing Association, Inc.;
(3) All owners of the participating horse hold a current license with the commission; and
(4) The trainer and driver of the participating horse hold current licenses with the commission.

Section 2. Track Requirements.

(1) A fair shall have a safe and adequate track, and the entire track, including start and finish lines, shall be visible to judges and spectators.

(2) The track shall be inspected and approved by a

representative of the commission.

(3) A track shall have a hub rail or pylons approved by the commission.

(4)(a) A fair shall have safe and adequate stalls for participating horses.

(b) If permanent stalls are not available, tents or other tie-in stalls may be used.

(c) Except as provided by paragraph (d) of this subsection, a county fair shall not charge stall rent for horses racing at the fair.

(d) A county fair may charge stall rent if the fair is held on state-owned property.

Section 3. [Fair Fees.

(1) ~~The Kentucky Colt Racing Association fees shall be as follows:~~

(a) ~~A nomination fee of fifty (50) dollars per horse due on or before February 15 of each racing year;~~

(b) ~~A sustaining fee of \$200 per horse due on or before April 15 of each racing year;~~

(c) ~~A starting fee of fifty (50) dollars per horse, per fair, due at the time of entry for the fair; and~~

(d) ~~A twenty-five (25) dollar fee per horse for starting in an overnight race, due at the time of entry for the fair.~~

(2) ~~A \$200 payment shall be due at the time of entry for a horse eligible for the fair finals.~~

Section 4.]Officials.

(1) The host track[~~Kentucky Colt Racing Association~~] shall submit to the commission, at least sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.

(2) 810 KAR 2:050 shall govern the judges and racing officials at Kentucky Proud Series stakes races.[~~At a county fair, there shall be at least one (1) presiding judge approved by the commission in the judges' stand. In addition, at a meeting in which races are chartered, the association member shall provide both a licensed charter and licensed clerk of the course.~~

(3) ~~A fair shall use licensed United States Trotting Association judges to preside over the racing.~~

(4) ~~The judges shall review the ownership of any horse that is entered in order to ensure the horse's eligibility to race.~~

(5) ~~The judges may determine the validity for racing purposes of any lease, transfer, or agreement pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.~~

(6) ~~The judges may declare a horse ineligible to race if the ownership or control of the horse is in question.]~~

(3)[~~(7)] Officials shall be paid by the entity hosting the races, with the exception of judges. Judges shall be paid by the commission. The Commission shall determine the number of judges, notwithstanding any provision of 810 KAR 2:050 to the contrary [~~Kentucky Colt Racing Association.~~~~

Section 5. ~~Starter. A fair shall use a licensed starter with adequate equipment.~~

Section 6. Use of Entry Fees.

(1) ~~The entry fees established in Section 3(1)(c) and (d) of this administrative regulation shall be retained by each fair as compensation for conducting its harness racing program and in reimbursement of the expenses incurred.~~

(2) ~~A fair shall, upon request, make a full accounting of the entry fees to the commission.~~

Section 7. Application for a License and Approval for Purse Distributions.

(1) ~~The Kentucky Colt Association on behalf of a fair shall apply to the commission for a license to conduct a harness racing event. A request for pari-mutuel wagering shall be included at the time of application.~~

(2) ~~Distribution of revenue for the Kentucky County Fairs shall be reviewed annually, not later than December 15 of each calendar year, by the advisory panel established in 810 KAR 7:040.~~

Section 4[8]. Requirements. All races shall be held in accordance with KRS Chapter 230 and 810 KAR Chapters 2, 3, 5, 6, 7, and 8[Changes in Racing Program. A fair shall have the right to change the order of its program and to postpone or cancel an event due to bad weather or unavoidable cause. If a race is canceled because of lack of entries, entry fees shall be refunded.

Section 9. Early Closers.

(1) ~~An early closing event, and all divisions of that event, shall race a single heat at a distance of one (1) mile and shall be contested for a purse approved by the commission on an annual basis.~~

(2) ~~An early closing race shall be contested regardless of the number of entries. However, a fair may cancel an overnight race with less than five (5) entries.]~~

Section 5[40]. Kentucky Sire Stakes Panel.

(1) No later than December 15 of each calendar year, the Kentucky Sire Stakes advisory panel established in 810 KAR 7:040 may annually address, and the commission may annually approve, at least the following conditions, which may be placed in the condition book for the following year.[~~Number of Starters and Purse Distributions. There shall be no more than two (2) trailers in any race at a county fair.~~

(1) ~~On a one (1) mile track, there shall be ten (10) horses on the gate and the race shall split on eleven (11) horses.~~

(2) ~~On a half mile track or five eighths mile track, there shall be five (5) horses on the gate with two (2) trailers, and the race shall split on eight (8) horses.]~~

(a)[~~(3)] The purse for each race;~~

(b) ~~Race dates;~~

(c) Fees, such as nomination, sustaining, starting, and finals fees;

(d) Distribution of revenue for the Kentucky Proud Series;

(f) Early closers; and

(g) Other conditions necessary to participate in the Kentucky Proud Series.[~~shall be divided as follows:~~

(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, 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.~~

Section 11. Points Distribution.

(1) ~~Points shall be awarded in an early closing race, and any division of an early closing race, as follows:~~

(a) ~~First place finisher - fifty (50) points;~~

(b) ~~Second place finisher - twenty-five (25) points;~~

(c) ~~Third place finisher - twelve (12) points;~~

(d) ~~Fourth place finisher - eight (8) points;~~

(e) ~~Fifth place finisher - five (5) points; and~~

(f) ~~Each starter that finishes out of the money - one (1) point.~~

(2) ~~If two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for that position and one-half (1/2) of the points awarded for the next lower position. The same procedure shall be used for the allocation of points if there is a dead-heat of three (3) or more horses.~~

(3) ~~A horse that is declared in and then is the subject of a judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision shall be final.~~

(4) ~~If there is a tie among two (2) or more horses with the same number of points, the tie shall be resolved in favor of the horse with the higher earnings in the early closing fair events in which the horses have competed.~~

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~~(5) If any division of a race is rained out before the completion of all other divisions of that race, the points for distribution set forth in this section shall not apply, and instead one (1) point shall be awarded to each horse entered in each division of that race that was rained out.~~

~~Section 12. Entry Limitation. A horse shall not be allowed to compete in more than one (1) race at any fair.]~~

Section 6[13]. Drug Testing.

(1) The winning horse at a fair race and any other horse or horses as selected by the judges may be subjected to a drug test as set forth in 810 KAR 8:010 and 810 KAR 8:060.

(2) A fair shall provide two (2) enclosed stalls and bedding to be used by the commission veterinarian for drug testing.

(3) The stalls required by subsection (2) of this section shall be located as close to the race track as possible.

(4) The stalls shall be positioned to allow the track announcer to be heard.

(5) The expense of the testing laboratory or other testing processes, whether furnished by contract or otherwise, together with all supplies and equipment used in connection therewith, shall be paid by the entity operating harness races under this administrative regulation.[]

~~Section 14. Coggins Test. A current negative Coggins test shall be required for each horse racing at a fair.~~

~~Section 15. Drivers. A driver shall wear full colors, white pants, a safety vest as required by 810 KAR 5:070 Section 17, and a safety helmet that meets the standards set forth in 810 KAR 5:070 Section 16, if on the track less than one (1) hour before the start of a fair racing program.~~

~~Section 16. Trophies. A fair shall provide a trophy or blanket to the winner of a race. If a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest heat or division.~~

~~Section 17. Early Deadlines. The deadline for entries at a fair shall be set by the Kentucky Colt Racing Association at its annual October meeting preceding the racing year.~~

~~Section 18. Programs. A county fair track holding races for purses shall provide a printed program available to the public containing the following information:~~

~~(1) For non pari-mutuel tracks:~~

~~(a) Horse's name and sex;~~

~~(b) Color and age of horse;~~

~~(c) Sire and dam of horse;~~

~~(d) Owner's name;~~

~~(e) Driver's name and colors;~~

~~(f) Trainer's name; and~~

~~(g) Summary of starts in purse races, earnings, and the best win time for the current and preceding year, which may be earned in either a purse or nonpurse race; and~~

~~(2) For pari-mutuel tracks:~~

~~(a) All of the program information required by subsection (1) of this section;~~

~~(b) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:~~

~~1. Date of race;~~

~~2. Location of race;~~

~~3. Size of track if other than a one-half (1/2) mile track;~~

~~4. Symbol for free-legged pacers;~~

~~5. Track condition;~~

~~6. Type of race;~~

~~7. Distance;~~

~~8. The fractional times of the leading horse including race times;~~

~~9. Post position;~~

~~10. Position of the one-quarter (1/4) marker, the one-half (1/2) marker, and the three-quarters (3/4) marker;~~

~~11. Stretch with lengths behind leader;~~

~~12. Finish with lengths behind leader;~~

~~13. Individual time of the horse;~~

~~14. Closing dollar odds;~~

~~15. Name of the driver;~~

~~16. Names of the horses that placed first, second, and third by the judges; and~~

~~17. Standard symbols for breaks and park-outs, if applicable;~~

~~(c) Indicate drivers racing with a provisional license; and~~

~~(d) Indicate pacers that are racing without hobbles.~~

~~Section 19. Payments. Nomination and sustaining payments shall be made to the Kentucky Colt Racing Association. Entry fees shall be paid to the fair for which the entry is taken.]~~

~~Section 7[20]. Violations. A person or association that violates a provision of this administrative regulation shall be subject to the penalties set forth in 810 KAR 8:030, Section 1[40].~~

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: March 3, 2021

FILED WITH LRC: March 12, 2021 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. EST on May 24, 2021 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation prescribes the conditions under which harness racing in the Kentucky Proud Series shall be conducted in Kentucky. Specifically, KRS 230.398 authorizes the commission to promulgate regulations establishing eligibility requirements for horses participating in harness racing at county fairs. This regulation establishes the eligibility requirements to race in the county fairs.

(b) The necessity of this administrative regulation: This regulation is a necessary exercise of the statutory authority of the commission set forth in KRS 230.215, which requires the commission to "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth of Kentucky,;" and the statutory authority set forth in KRS 230.398, which states that "[t]he racing commission shall have the authority to promulgate administrative regulations as may be necessary for the conduct of these races.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority granted to the commission by KRS 230.215 and KRS 230.398.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The

administrative regulation will assist in the effective administration of statutes by providing eligibility requirements and rules for harness racing at county fairs.

(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 proposed amendment seeks to rebrand the harness races as the "Kentucky Proud Series." The amendment also removes obsolete and duplicative references and provisions. For instance, all references to the Kentucky Colt Racing Association are removed. Additionally, this proposed amendment removes several sections that are more appropriate for a racing condition sheet or condition book, and makes them available for the panel to decide on a yearly basis.

(b) The necessity of the amendment to this administrative regulation: This proposed amendment is necessary to clean up obsolete and duplicative material. It is also necessary to provide the commission with more latitude to adapt to changing conditions as it relates to the Kentucky Proud racing series.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment prescribes conditions under which racing and pari-mutuel wagering will be conducted, pursuant to KRS 230.215. Additionally, this amendment is a regulation establishing eligibility conditions for horse participating in harness racing at county fairs under KRS 230.298.

(d) How the amendment will assist in the effective administration of the statutes: This proposed amendment provide the commission with more latitude to adapt to changing conditions as it relates to the Kentucky Proud racing series.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect: standardbred breeders, standardbred owners; boarding farm owners and employees; Kentucky veterinarians and equine healthcare facilities; horse transportation companies; farriers, farmers and suppliers of hay, feed, and grain; equine supply companies; daily maintenance care and tack; Kentucky standardbred sale companies; retail stores and maintenance services; the Kentucky counties hosting the fair; hotels and gas stations located near the county fairs; and state and local government entities that impose payroll taxes.

(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 administrative regulation expands the racing opportunities for owners and trainers of Kentucky-bred standardbred horses. All other entities identified in (3) will not require any additional responsibilities, but will reap the benefits of a stronger breeding industry in Kentucky, as well as a supported fair circuit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: None of the entities identified in (3) will incur any new costs in complying with this proposed amendment. Rather, this proposed amendment offers more racing opportunities for Kentucky-bred standardbred horses.

(c) As a result of compliance, what benefits will accrue to the entities: The entities identified in question (3) will benefit from a clearly defined set of regulatory requirements and guidelines concerning Standardbred racing at county fairs.

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

(a) Initially: There is no initial administrative cost to implement this amendment.

(b) On a continuing basis: There is no continuing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment will not require a source of funding for implementation and enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This proposed

amendment will not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? NA

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 Horse Racing Commission and the counties that conduct harness racing as part of their annual county fairs 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. The statutory authority for this administrative regulation is found in KRS 230.215, 230.260, and 230.398.

(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? Although there are no fees that will generate revenue for the state or local governments, there will be an increase in payroll taxes and potential tourism dollars for all counties participating in Kentucky Proud Series harness racing.

(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? Continued growth in the program will increase payroll taxes and potential tourism dollars for all counties participating in Kentucky Proud Series harness racing.

(c) How much will it cost to administer this program for the first year? There will be no new costs to the agency to administer this program. The commission has been administering the Kentucky Proud Series since 2020.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to the agency to administer this program. The commission has been administering the Kentucky Proud Series since 2020.

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

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 6:001. Definitions for 810 KAR Chapter 6.

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 the Kentucky Horse Racing Commission (the "commission") to regulate conditions under which ~~horse~~[~~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 ~~Kentucky~~[~~this state~~]. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel [~~mutuel~~] wagering on horse races under the pari-

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mutuel system of wagering. This administrative regulation defines the terms used in 810 KAR Chapter 6[4].

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) "Appaloosa horse" means a horse duly registered with the Appaloosa Horse Club, Inc., Moscow, Idaho.

(4) "Appaloosa racing" is defined by KRS 230.210(3).

(5) "Arabian horse" means a horse duly registered with the Arabian Horse Club Registry of America.

(6)[(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 6[4].

(7)[(4)] "Association" is defined by KRS 230.210(5).

(8)[(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.

(9)[(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.

(10)[(7)] "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(11)[(8)] "Breakage" means the net pool minus payout.

(12)[(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.

(13)[(10)] "Calendar days" means consecutive days counted irrespective of number of racing days.

(14)[(11)] "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 810 KAR 6:020.

(15)[(12)] "Claiming race" means any race in which every horse running in the race may be transferred in conformity with 810 KAR 4:050.

(16)[(13)]—"Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.]

(17)[(14)] "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 [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, KRS 230.750, and Title 810 of the Kentucky Administrative Regulations. This term may also be defined as "takeout," pursuant to 810 KAR 6:020.

(18)[(15)] "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(19)[(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.

(20)[(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 6[4].

(21)[(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] races.

(22)[(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] 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.

(23)[(20)] "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.

(24) "Driver" means a person who is licensed to drive a horse in a harness race.

(25)[(21)] "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(26)[(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.

(27)[(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.

(28)[(24)] "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race or races other than a win, place, or show wager placed on a live horse race.

(29)[(25)] "Field" or "mutuel field" means a single betting interest involving more than one (1) horse that is not a mutuel entry.

(30)[(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.

(31)[(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.

(32)[(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.

(33)[(29)] "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(34)[(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.

(35)[(31)] "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding)[a thoroughbred registered with The Jockey Club irrespective of age or sex designation].

(36)[(32)] "Ineligible" means a horse or person not qualified under 810 KAR Chapter 6[4] or conditions of a race to participate in a specified racing activity.

(37)[(33)] "Initial seed pool" means a nonrefundable pool of money [funded by] that may be funded by an association in [an amount sufficient] order to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race in the event of a minus pool.

(38)[(34)] "Jockey" means a rider currently licensed to ride in races other than harness 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.

(39) "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.

(40)[(35)] "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(41)[(36)] "Licensed premises" means:

(a) For facilities in operation as of 2010, [The] the location and physical plant described in [response to question P of the "Commonwealth of Kentucky] the "Kentucky Horse Racing Commission Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in 2010;

(b) Real property of an association, if the association receives approval from the commission after 2010 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. ~~Not [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.

~~(42)[(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.

~~(43)[(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.

~~(44)[(39)]~~ "Match race" means a race between two (2) horses for which no other horses are eligible.

~~(45)[(40)]~~ "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 at 10 a.m. of the first racing day; and

(b) Extends through a period ending one (1) hour after the last scheduled race of the last day.

~~(46)[(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] that pari-mutuel pool.~~

~~(47)[(42)]~~ "Month" means calendar month.

~~(48)[(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.

~~(49)[(44)]~~ "Net pool" means the total amount wagered less refundable wagers and takeout.

~~(50)[(45)]~~ "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

~~(51)[(46)]~~ "Nominator" means the person in whose name a horse is entered for a race.

~~(52)[(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.

~~(53)[(48)]~~ "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering previously or hereafter approved by the commission in which one (1) or more patrons wager on a horse race or races, whether live, simulcast, or previously run. Wagers shall be placed in one or more wagering pools, and wagers on different races or sets of races may be pooled together. Patrons may establish odds or payouts, and winning patrons share in amounts wagered including any carryover amounts, plus any amounts provided by an association less any deductions required, as approved by the racing commission and permitted by law. Pools may be paid out incrementally over time as approved by the commission~~[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].~~

~~(54)~~ "Pari-mutuel pool" means any pool into which pari-mutuel wagers made by patrons are placed. For every wager placed into a pari-mutuel pool by a patron, that patron is eligible to receive at least a minimum payout on a winning wager.

~~(55)[(49)]~~ "Patron" means an individual present at a track, licensed premises, or a simulcast facility who observes or wagers on ~~[a] live or historical horse [race] races.~~

~~(56)[(50)]~~ "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

~~(57)[(54)]~~ "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.

~~(58)[(55)]~~ "Player-funded pool" means a pool of money funded by patrons wagering on a live or historical horse race or races that is only used to ensure that a patron will receive a payout on a winning wager in the event of a minus pool as defined in this regulation.

~~(59)[(52)]~~ "Post" means the starting point of a race.

~~(60)[(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.

~~(61)[(54)]~~ "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

~~(62)[(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.

~~(63)[(56)]~~ "Purse" means the gross cash portion of the prize for which a race is run.

~~(64)~~ "Quarter horse" means a horse registered with the American Quarter Horse Association of Amarillo, Texas.

~~(65)[(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.

~~(66)[(58)]~~ "Race" means a running contest between ~~[thoroughbreds] horses,~~ ridden by jockeys or driven by drivers, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

~~(67)[(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.

~~(68)[(60)]~~ "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

~~(69)[(64)]~~ "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.

~~(70)[(62)]~~ "Registration certificate" means, with respect to thoroughbreds:

(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.

~~(71)[(63)]~~ "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

~~(72)[(64)]~~ "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

~~(73)[(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.

~~(74)~~ [(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.

~~(75)[(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.]

~~(76)~~ "Simulcasting" is defined by KRS 230.210.

~~(77)[(69)]~~ "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

~~(78)[(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) Included in the purse.

~~(79)~~~~(74)~~ "Stakes race" means a race that 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).

~~(80)~~~~(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.

~~(81)~~~~(73)~~ "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.

~~(82)~~~~(74)~~ "Subscription" means nomination or entry of a horse in a stakes race.

~~(83)~~~~(75)~~ "Takeout" is defined in Section 1(17)(b) of this regulation as "Commission."~~means the total amount of money, excluding breakage and any amounts allocated to a seed pool, withheld from each pari-mutuel pool, as authorized by KRS 230.3615 and 810 KAR Chapter 1.~~

~~(84)~~~~(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 or races.

~~(85)~~~~(77)~~ "Thoroughbred racing" is defined by KRS 230.210~~(24)~~.

~~(86)~~~~(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.

~~(87)~~~~(79)~~ "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

~~(88)~~ "Wagering pool" is defined in Section 1 of this administrative regulation as pari-mutuel pool.

~~(89)~~~~(80)~~ "Walkover" means a race in which the only starter or all starters represent single ownership.

~~(90)~~~~(81)~~ "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

~~(91)~~~~(82)~~ "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

~~(92)~~~~(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.

~~(93)~~~~(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.

~~(94)~~~~(85)~~ "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. If 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.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: February 15, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on May 24, 2021 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of

the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the regulatory definitions that apply to all pari-mutuel and exotic wagering on live and historical horse races in the Commonwealth.

(b) The necessity of this administrative regulation: The regulation is necessary to provide specific and updated definitions of the terms used in the commission's regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation provides specific and updated definitions for the terms used in the commission's administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: First, this proposed amendment will allow racing associations to offer pari-mutuel wagering on historical horse races while maintaining compliance with recent Supreme Court case law. Also, this proposed amendment helps to consolidate the pari-mutuel and exotic pari-mutuel wagering definitions into one regulation rather than three, so that KAR Title 810 will be expanded to regulate pari-mutuel and exotic wagering on all types of live or historical horse racing.

(b) The necessity of the amendment to this administrative regulation: Primarily, this amendment is necessary to assist Kentucky racing associations in achieving compliance with the Kentucky Supreme Court's decision in Family Tr. Found of Kentucky, Inc. v. Kentucky Horse Racing Comm'n, No. 2018-SC-0630-TG, 2020 WL 5806813 (Ky. Sept. 24, 2020). In addition, this amendment is necessary to reduce the number of regulations applicable to pari-mutuel and exotic pari-mutuel wagering and make the regulations easier to understand.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to regulate the conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This regulation provides specific definitions of terms used in the commission's administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This proposed amendment provides definitions of terms used in the commission's administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys

who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse racing in the Commonwealth, and the commission.

(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: Racing associations offering HHR wagering must eliminate the use of the initial seed pool, as per the Supreme Court's September 24, 2020 Opinion. Additionally, the associations may opt to use a player-funded pool, as set forth in the definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity or increase compliance costs at all for the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The racing associations will have a defined process to follow if they plan to offer exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each racing association. The increased purses will help the racing associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to a racing association's facilities. The patrons will benefit from any improvements to a racing association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the racing associations for additional employee compensation and other expenses.

(b) On a continuing basis: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the racing associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. As a general rule, the commission is reimbursed by the racing associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(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 proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs at all for the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each racing association.

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 Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260, 230.361, and 230.370.

(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 proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this proposed amendment will preserve tax revenue by allowing associations to continue offering pari-mutuel wagering on historical horse racing, while still complying with recent Supreme Court case law. As it is under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this proposed amendment will preserve tax revenue by allowing associations to continue offering pari-mutuel wagering on historical horse racing, while still complying with recent Supreme Court case law. As it is under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This regulation will have no effect on the expenditures and revenues of any state or local government agency.

(d) How much will it cost to administer this program for subsequent years? There will be no administrative costs as a result of this regulation.

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: N/A.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 6:020. Calculation of payouts and distribution of pools.

RELATES TO: KRS 230.210, 230.215, 230.260, 230.361, 230.3615, 230.990

STATUTORY AUTHORITY: KRS 230.215(2), 230.260, 230.361(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the Kentucky Horse Racing Commission (the "commission") the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky~~[the Commonwealth]~~. KRS 230.361(1) requires the commission to promulgate administrative regulations governing wagering under the pari-mutuel system of wagering. This

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administrative regulation establishes the calculation of payouts and the distribution of pools for pari-mutuel wagering on live horse races.

Section 1. Definitions.

(1) "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.

(2) "Breakage" means the net pool minus payout.

(3) "Broken consolation price" means the profit per dollar, plus one (1) dollar, rounded down to the break point.

(4) "Carryover" means non-distributed pool monies that are retained and added to a corresponding pool in accordance with KAR Title 810.

(5) "Consolation payout" means a payout to individuals who do not correctly choose all of the selections in a multiple-pick wager, or a payout to individuals who wager on a horse in a multi-pick wager that is subsequently scratched.

(6) "Covered betting interest" means a betting interest or combination of betting interests that has been wagered upon.

(7) "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.

(8) "Gross pool" means the sum of all wagers less refunds.

(9) "Individual" means a natural person, at least eighteen (18) years of age, except does not include any corporation, partnership, limited liability company, trust, or estate.

(10) "Multi-commission pool" means a pari-mutuel pool where entities accepting wagers use different takeout rates.

(11) "Net pool" means the total amount wagered less refundable wagers and takeout.

(12) "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(13) "Performance" means a specified number of races on a given race day that constitutes a full card of racing.

(14) "Profit" means the net pool less the gross amount wagered if using the standard price calculation procedure and the net pool less the net amount wagered if using the net price calculation procedure.

(15) "Profit split" means to calculate a payout by splitting a pari-mutuel pool equally between each winning combination and dividing each portion by the number of winning tickets.

(16) "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.

(17) "Single commission pool" means a pari-mutuel pool where all entities accepting wagers use the same takeout rate.

(18) "Single price pool" means a pari-mutuel pool in which the entire profit is paid to holders of winning tickets after the deduction of the takeout.

(19) "Takeout" is defined in 810 KAR 6:001, Section 1(17)(b) as "Commission." [means the total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by KRS 230.3615 and KAR Title 810.]

(20) "Unbroken consolation price" means the profit per dollar plus one (1) dollar.

Section 2. General Requirements for Live Horse Races.

(1) All pari-mutuel pools for live races shall be separately and independently calculated and distributed. The takeout shall be deducted from each gross pool as stipulated by KRS 230.3615. The remainder of the pool shall be the net pool for distribution as payoff on winning pari-mutuel wagers.

(2)(a) Single commission pari-mutuel pools may be calculated using either the standard price calculation procedure or the net price calculation procedure.

(b) Multi-commission pari-mutuel pools shall be calculated using the net price calculation procedure.

(3) The standard price calculation procedure shall be as follows:

(a) Single price pools - Win pool

Gross Pool	=	Sum of Wagers on all Betting Interests - Refunds
Takeout	=	Gross Pool x Percent Takeout

Net Pool	=	Gross Pool - Takeout
Profit	=	Net Pool - Gross Amount Bet on Winner
Profit Per Dollar	=	Profit / Gross Amount Bet on Winner
\$1 Unbroken Price	=	Profit Per Dollar + \$1
\$1 Broken Price	=	\$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	\$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

(b) Profit split - Place pool. Profit shall be net pool less gross amount bet on all place finishers. Finishers shall split profit 1/2 and 1/2 (place profit), then divide by gross amount bet on each place finisher for two (2) unique prices.

(c) Profit split - show pool. Profit shall be net pool less gross amount bet on all show finishers. Finishers shall split profit 1/3 and 1/3 and 1/3 (show profit), then divide by gross amount bet on each show finisher for three (3) unique prices.

(4) The net price calculation procedure shall be as follows:

(a) Single price pool - Win pool

Gross Pool	=	Sum of Wagers on all Betting Interests - Refund
Takeout	=	Gross Pool x Percent Takeout for Each Source
Net Pool	=	Gross Pool - Takeout
Net Bet on Winner	=	Gross Amount Bet on Winner x (1 - Percent Takeout)
Total Net Pool	=	Sum of All Sources Net pools
Total Net Bet on Winner	=	Sum of All Sources Net Bet on Winner
Total Profit	=	Total Net Pool - Total Net Bet on Winner
Profit Per Dollar	=	Total Profit / Total Net Bet on Winner
\$1 Unbroken Base Price	=	Profit Per Dollar + \$1 for each source:
\$1 unbroken price	=	\$1 Unbroken Base Price x (1 - Percent Takeout)
\$1 Broken Price	=	\$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	\$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

(b) Profit split - Place pool. Total profit shall be the total net pool less the total net amount bet on all place finishers. Finishers shall split total profit 1/2 and 1/2 (place profit), then divide by total net amount bet on each place finisher for two (2) unique unbroken base prices.

(c) Profit split - Show pool. Total profit shall be the total net pool less the total net amount bet on all show finishers. Finishers shall split total profit 1/3 and 1/3 and 1/3 (show profit), then divide by total net amount bet on each show finisher for three (3) unique unbroken base prices.

(5) Each association shall disclose the following in its license application:

(a) Which price calculation method it will use for single commission pari-mutuel pools;

(b) The ticket denominations for each type of pari-mutuel wager;

(c) The procedures for refunds of pari-mutuel wagers;

(d) The takeout for each type of pari-mutuel wager;

(e) Which pari-mutuel wagers will include carryover and consolation pools and the percentages of the net pool assigned to each; and

(f) For each type of pari-mutuel wagering involving more than one (1) live horse race, the procedures to be used if a race is cancelled.

(6) The individual pools described in this administrative regulation may be given alternative names by each association if prior approval is obtained from the commission.

(7) A mutuel entry or a mutuel field in any race shall be a single betting interest for the purpose of each of the wagers described in this administrative regulation and the corresponding pool calculations and payouts. If either horse in a mutuel entry, or any horse in a mutuel field, is a starter in a race, the entry or the field

selection shall remain as the designated selection for any of the wagers described in this administrative regulation and the selection shall not be deemed scratched.

Section 3. Pools Dependent Upon Entries for Live Horse Races.

(1) Except as provided in subsection (3) of this section, when pools are opened for wagering all associations may:

(a) Offer win wagering on all races with four (4) or more betting interests;

(b) Offer place wagering on all races with five (5) or more betting interests;

(c) Offer show wagering on all races with six (6) or more betting interests.

(d) Offer Quinella wagering on all races with four (4) or more betting interests;

(e) Offer Exacta wagering on all races with four (4) or more betting interests;

(f) Offer Trifecta wagering on all races with five (5) or more betting interests;

(g) Offer Superfecta wagering on all races with six (6) or more betting interests;

(h) Offer Big Q wagering on all races with three (3) or more betting interests; and

(i) Offer Super High 5 wagering on all races with seven (7) or more betting interests.

(2) Except as provided in subsection (4) of this section, when pools are opened for wagering, associations shall not offer Twin Trifecta wagering on any races with six (6) or fewer betting interests.

(3) The chief state steward or presiding judge, or his or her designee, may authorize an association to offer a subject wager with less than the number of horses required by this section if:

(a) Requested by the association; and

(b) The integrity of the wager would not be affected by the smaller field.

(4) If a horse is scratched by the judges or stewards after wagering has commenced or a horse is prevented from running in a live horse race because of a failure of the starting gate, and the number of actual starters representing different betting interests is reduced below the requirements in subsection (1) or (2) of this section, the association may cancel the affected wagers and refund the entire affected pools with the approval of the Chief State Steward or Presiding Judge, or his or her designee.

(5) In all cases in which the Chief State Steward or Presiding Judge, or his or her designee, authorizes the changes described in subsection (4) or (5) of this section, the association shall provide a written report to the commission within twenty-four (24) hours of the post time of the race explaining the need to cancel the wagering pool.

Section 4. Win Pools.

(1) The amount wagered on the betting interest which finishes first shall be deducted from the net win pool and the balance remaining shall be the profit. The profit shall be divided by the amount wagered on the betting interest finishing first and the result shall be the profit per dollar wagered to win on that betting interest.

(2) The net win pool shall be distributed as a single price pool in the following precedence based upon the official order of finish:

(a) To individuals whose selection finishes first, except if there are not any of those wagers, then;

(b) To individuals whose selection finishes second, except if there are not any of those wagers, then;

(c) To individuals whose selection finishes third, except if there are not any of those wagers, then;

(d) The entire pool shall be refunded on win wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the win pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first involving horses representing two (2) or more betting interests, the win pool shall be distributed as a profit split.

Section 5. Place Pools.

(1) The amounts wagered to place on the first two (2) betting interests to finish shall be deducted from the net pool and the balance remaining shall be the profit. The profit shall be divided into two (2) equal portions, with each portion assigned to each winning betting interest and divided by the dollar amount wagered to place on that betting interest. The result shall be the profit per dollar wagered to place on that betting interest.

(2) The net place pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first two (2) places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;

(b) As a profit split to individuals whose selection is included within the first two (2) finishers, except if there are not any of those wagers on one (1) of those two (2) finishers, then;

(c) As a single price pool to individuals who selected the one (1) covered betting interest included within the first two (2) finishers, except if there are not any of those wagers, then;

(d) As a single price pool to individuals who selected the third-place finisher, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on place wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the place pool shall be distributed as a single price pool.

(b) If there is a dead heat for first involving horses representing two (2) or more betting interests, the place pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the place pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for second involving horses representing two (2) or more betting interests, the place pool shall be divided, with one-half (1/2) of the profit distributed to place wagers on the betting interest finishing first and the remainder of the profit distributed equally among place wagers on the betting interests involved in the dead heat for second.

Section 6. Show Pools.

(1) The amounts wagered to show on the first three (3) betting interests shall be deducted from the net pool and the balance remaining shall be the profit. The profit shall be divided into three (3) equal portions, with each portion assigned to each winning betting interest and divided by the amount wagered to show on that betting interest. The result shall be the profit per dollar wagered to show on that betting interest.

(2) The net show pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first three (3) places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;

(b) If horses of a mutuel entry or mutuel field finish as two (2) of the first three (3) finishers, the profit shall be divided with two-thirds (2/3) distributed to individuals who selected the mutuel entry or mutuel field and one-third (1/3) distributed to individuals who selected the other betting interest included within the first three (3) finishers, otherwise;

(c) As a profit split to individuals whose selection shall be included within the first three (3) finishers, except if there are not any of those wagers on one (1) of those three (3) finishers, then;

(d) As a profit split to individuals who selected one (1) of the two (2) covered betting interests included within the first three (3) finishers, except if there are not any of those wagers on two (2) of those three (3) finishers, then;

(e) As a single price pool to individuals who selected the one (1) covered betting interest included within the first three (3) finishers, except if there are not any of those wagers, then;

(f) As a single price pool to individuals who selected the fourth-place finisher, except if there are not any of those wagers, then;

(g) The entire pool shall be refunded on show wagers for that race.

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(3)(a) If there is a dead heat for first involving two (2) horses representing the same betting interest, the profit shall be divided with two-thirds (2/3) to individuals who selected the first-place finishers and one-third (1/3) distributed to individuals who selected the betting interest finishing third.

(b) If there is a dead heat for first involving three (3) horses representing a single betting interest, the show pool shall be distributed as a single price pool.

(c) If there is a dead heat for first involving horses representing two (2) or more betting interests, the show pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the profit shall be divided with one-third (1/3) distributed to individuals who selected the betting interest finishing first and two-thirds (2/3) distributed to individuals who selected the second-place finishers.

(b) If there is a dead heat for second involving horses representing two (2) betting interests, the show pool shall be distributed as a profit split.

(c) If there is a dead heat for second involving horses representing three (3) betting interests, the show pool shall be divided with one-third (1/3) of the profit distributed to show wagers on the betting interest finishing first and the remainder shall be distributed equally among show wagers on those betting interests involved in the dead heat for second.

(5)(a) If there is a dead heat for third involving horses representing the same betting interest, the show pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for third involving horses representing two (2) or more betting interests, the show pool shall be divided with two-thirds (2/3) of the profit distributed to show wagers on the betting interests finishing first and second and the remainder shall be distributed equally among show wagers on those betting interests involved in the dead heat for third.

Section 7. Exacta Pools.

(1) The Exacta shall require the selection of the first two (2) finishers, in their exact order, for a single race.

(2) The net Exacta pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two (2) finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished in the correct sequence as the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination included the betting interest that finishes first, except if there are not any of those wagers, then;

(d) As a single price pool to individuals whose combination included the betting interest that finished second, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Exacta wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the Exacta pool shall be distributed as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) If there is a dead heat for first involving horses representing two (2) or more betting interests, the Exacta pool shall be distributed as a profit split.

(4) If there is a dead heat for second involving horses representing the same betting interest, the Exacta shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for second involving horses representing two (2) or more betting interests, the Exacta pool shall be distributed to ticket holders in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the first-place betting interest with any of the betting interests involved in the dead heat for second, except if there is only one (1) covered

combination, then;

(b) As a single price pool to individuals combining the first-place betting interest with the one (1) covered betting interest involved in the dead heat for second, except if there are not any of those wagers, then;

(c) As a profit split to individuals whose wagers correctly selected the winner for first-place and any of the betting interests which finished in a dead-heat for second-place, except if there are not any of those wagers, then;

(d) The entire pool shall be refunded on Exacta wagers for that race.

Section 8. Quinella Pools.

(1) The Quinella shall require the selection of the first two (2) finishers, irrespective of order, for a single race.

(2) The net Quinella pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two (2) finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a profit split to individuals whose combination included either the first or second place finisher, except if there are not any of those wagers on one (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included the one (1) covered betting interest included within the first two (2) finishers, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Quinella wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the Quinella pool shall be distributed to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) If there is a dead heat for first involving horses representing two (2) betting interests, the Quinella pool shall be distributed as if no dead heat occurred.

(c) If there is a dead heat for first involving horses representing three (3) or more betting interests, the Quinella pool shall be distributed as a profit split.

(4) If there is a dead heat for second involving horses representing the same betting interest, the Quinella pool shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for second involving horses representing two (2) or more betting interests, the Quinella pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, except if there is only one (1) covered combination, then;

(b) As a single price pool to individuals combining the winner with the one (1) covered betting interest involved in the dead heat for second, except if there are not any of those wagers, then;

(c) As a profit split to individuals combining the betting interests involved in the dead heat for second, except if there are not any of those wagers, then;

(d) As a profit split to individuals whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Quinella wagers for that race.

Section 9. Trifecta Pools.

(1) The Trifecta shall require selection of the first three (3) finishers, in their exact order, for a single race.

(2) For Trifecta price calculations only, the highest placed finisher of any part of a mutuel entry or mutuel field shall be used, eliminating all other parts of that mutuel entry or mutuel field from

consideration regardless of finishing order.

(3) The Trifecta pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first three (3) betting interests, except if there are not any of those wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except if there are not any of those wagers, then;

(d) The entire pool shall be refunded on Trifecta wagers for that race.

(4)(a) If less than three (3) betting interests finish and the race is declared official, payouts shall be made based upon the order of finish of those betting interests that finish the race.

(b) The balance of any selection beyond the number of betting interests completing the race shall be ignored.

(5)(a) If there is a dead heat for first involving horses representing three (3) or more betting interests, all of the wagering combinations selecting three (3) betting interests that correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing two (2) betting interests, both of the wagering combinations selecting the two (2) betting interests that finish in a dead heat, irrespective of order, along with the third place betting interest shall share in a profit split.

(6) If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second shall share in a profit split.

(7) If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third shall share in a profit split.

(8)(a) Trifecta wagering shall not be conducted on any race having fewer than five (5) separate betting interests.

(b) If fewer than five (5) horses start due to a late scratch or malfunction of the starting gate, the Trifecta shall be cancelled and the gross pool shall be refunded.

Section 10. Superfecta Pools.

(1) The Superfecta shall require selection of the first four (4) finishers, in their exact order, for a single race.

(2) The net Superfecta pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first four (4) betting interests, except if there are not any of those wagers, then;

(b) As a single price pool to individuals whose combination included in correct sequence, the first three (3) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination included, in correct sequence, the first two (2) betting interests, except if there are not any of those wagers, then;

(d) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Superfecta wagers for that race.

(3)(a) If less than four (4) betting interests finish and the race is declared official, payouts shall be made based upon the order of finish of those betting interests completing the race.

(b) The balance of any selection beyond the number of betting interests completing the race shall be ignored.

(4)(a) If there is a dead heat for first involving horses representing four (4) or more betting interests, all of the wagering combinations selecting betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing

three (3) betting interests, all of the wagering combinations selecting the three (3) betting interests that finish in a dead heat, irrespective of order, along with the fourth-place betting interest shall share in a profit split.

(c) If there is a dead heat for first involving horses representing two (2) betting interests, both of the wagering combinations selecting the two (2) dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.

(5)(a) If there is a dead heat for second involving horses representing three (3) or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three (3) betting interests involved in the dead heat for second shall share in a profit split.

(b) If there is a dead heat for second involving horses representing two (2) betting interests, all of the wagering combinations correctly selecting the winner, the two (2) dead-heated betting interests, irrespective of order, and the fourth-place betting interest shall share in a profit split.

(6) If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any two (2) of the betting interests involved in the dead heat for third shall share in a profit split.

(7) If there is a dead heat for fourth, all wagering combinations correctly selecting the first three (3) finishers, in correct sequence, along with any interest involved in the dead heat for fourth, shall share in a profit split.

(8) Superfecta wagering shall not be conducted on any race having fewer than six (6) separate betting interests. If fewer than six (6) horses start due to a late scratch or malfunction of the starting gate, Superfecta wagering shall be cancelled and the gross pool shall be refunded.

Section 11. Super High-Five Pools.

(1) The Super High-Five shall require selection of the first five (5) finishers, in their exact order, for a single race.

(2) Unless otherwise stated, the net Super High-Five pool shall be distributed as a single-priced pool to those who have selected all five (5) finishers, in exact order, based upon the official order of finish.

(3)(a) Each association shall disclose in its license application whether it intends to schedule Super High-Five wagering and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers; and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

(b) Any subsequent changes to the Super High-Five scheduling shall require prior approval from the commission or its designee.

(4) If there are no winning wagers selecting all five (5) finishers, in exact order, the entire Super High-Five pool shall be added to the carryover.

(5) If due to a late scratch the number of betting interests in the Super High-Five pool is reduced to fewer than seven (7), the Super High-Five pool shall be cancelled and shall be refunded, except not the Super High-Five carryover pool.

(6) If a betting interest in the Super High-Five pool is scratched from the race, there shall not be any more wagers accepted selecting that scratched runner and all tickets previously sold designating that horse shall be refunded and that money shall be deducted from the gross pool.

(7) If any dead-heat occurs in any finishing position, all wagers selecting either of the runners finishing in a dead heat with the correct runners not finishing in a dead heat shall be winners and share the Super High-Five pool. Payouts shall be calculated by splitting the pool equally between each winning combination, then dividing each portion by the number of winning tickets.

(8)(a) On the final day of a meeting, an association shall make a final distribution of all accumulated carryovers along with the net pool of the Super High-Five pool conducted on the final day of the meeting as a single price pool to:

1. Individuals with tickets selecting the first five (5) finishers, in

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exact order, for the designated race, or, if there are not any of those wagers, to;

2. Individuals with tickets selecting the first four (4) finishers, in exact order, for the designated race, or, if there are not any of those wagers, to;

3. Individuals with tickets selecting the first three (3) finishers, in exact order, for the designated race, or, if there are not any of those wagers, to;

4. Individuals with tickets selecting the first two (2) finishers, in exact order, for the designated race, or, if there are not any of those wagers, to;

5. Individuals with tickets selecting the winner for the designated race, or, if there are not any of those wagers;

6. All money wagered into the Super High-Five pool that day shall be refunded and any carryover shall be retained and added to the Super High -Five pool on the first racing day of the next meeting.

(9) If, for any reason, the Super High-Five carryover shall be held over to the corresponding Super High-Five pool of a subsequent meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The Super High-Five carryover plus accrued interest shall then be added to the net Super High-Five pool of the following meeting on a date and performance approved by the commission.

Section 12. Double Pools.

(1) The double pool shall require the selection of the first-place finisher in each of two (2) specified races.

(2) The net double pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selections finished first in each of the two (2) races, except if there are not any of those wagers, then;

(b) As a profit split to individuals who selected the first-place finisher in either of the two (2) races, except if there are not any of those wagers, then;

(c) As a single price pool to individuals who selected the one (1) covered betting interest that finished first in either race, except if there are not any of those wagers, then;

(d) As a single price pool to individuals whose selection finished second in each of the two (2) races, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on the double wagers for those races.

(3)(a) If there is a dead heat for first in either of the races involving horses representing the same betting interest, the double pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in either of the races involving horses representing two (2) or more betting interests, the double pool shall be distributed as a profit split if there is more than one (1) covered winning combination.

(4) If a betting interest in the first half of the double is scratched prior to the close of wagering on the first double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(5) If a betting interest in the second half of the double is scratched prior to the close of wagering on the first double race, all money wagered on the combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(6) If a betting interest in the second half of the double is scratched after the close of wagering on the first double race, all wagers combining the winner of the first race with the scratched betting interest in the second race shall be allocated a consolation payout.

(a) In calculating the consolation payout, the net double pool shall be divided by the total amount wagered on the winner of the first race and an unbroken consolation price obtained.

(b) The broken consolation price shall be multiplied by the dollar value of wagers on the winner of the first race combined with the scratched betting interest to obtain the consolation payout.

(c) Breakage shall not be included in this calculation.

(d) The consolation payout shall be deducted from the net

double pool before calculation and distribution of the winning double payout.

(e) Dead heats including separate betting interests in the first race shall result in a consolation payout calculated as a profit split.

(7) If either of the double races is cancelled prior to the first double race, or the first double race is declared "no contest," the entire double pool shall be refunded on double wagers for those races.

(8)(a) If the second double race is cancelled or declared a "no contest" after the conclusion of the first double race, the net double pool shall be distributed as a single price pool to individuals who selected the winner of the first double race.

(b) If there is a dead heat involving separate betting interests, the net double pool shall be distributed as a profit split.

Section 13. Big Q Pools.

(1) The Big Q shall require selection of the first two (2) finishers, irrespective of order, in each of two (2) designated races.

(a) Each winning ticket for the first Big Q race shall be exchanged for a free ticket on the second Big Q race in order to remain eligible for the second half Big Q pool.

(b) Exchange tickets shall be exchanged at attended ticket windows prior to the second race comprising the Big Q.

(c) There shall not be a monetary reward for winning the first Big Q race.

(d) Each of the designated Big Q races shall be included in only one (1) Big Q pool.

(2) In the first Big Q race only, winning wagers shall be determined using the following precedence based on the official order of finish for the first Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two (2) finishers, those who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners, otherwise:

(b) Individuals whose combination finished as the first two (2) betting interests shall be winners, except if there are not any of those wagers, then;

(c) Individuals whose combination included either the first- or second-place finisher shall be winners, except if there are not any of those wagers on one (1) of the two (2) finishers, then;

(d) Individuals whose combination included the one (1) covered betting interest included within the first two (2) finishers shall be winners, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Big Q wagers for that race.

(3)(a) In the first Big Q race only, if there is a dead heat for first involving horses representing the same betting interest, individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners.

(b) In the first Big Q race only, if there is a dead heat for first involving horses representing two (2) betting interests, the winning Big Q wagers shall be determined as if no dead heat occurred.

(c) In the first Big Q race only, if there is a dead heat for first involving horses representing three (3) or more betting interests, individuals whose combination included any two (2) of the betting interests finishing in the dead heat shall be winners.

(4) In the first Big Q race only, if there is a dead heat for second, the winners shall be those who combined the first place finisher with any of the runners involved in the dead heat for second.

(5) In the second Big Q race only, the entire net Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two (2) finishers, as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a profit split to individuals whose combination included either the first- or second- place finisher, except if there are not any

of those wagers on one (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included one (1) of the covered betting interests included within the first two (2) finishers, except if there are not any of those wagers, then;

(e) As a single price pool to all exchange ticket holders for that race, except if there are not any of those wagers, then;

(f) In accordance with subsection (2) of this section.

(6)(a) In the second Big Q race only, if there is a dead heat for first involving horses representing the same betting interest, the net Big Q pool shall be distributed to individuals selecting the mutual entry or mutual field combined with the next separate betting interest in the official order of finish.

(b) In the second Big Q race only, if there is a dead heat for first involving horses representing two (2) betting interests, the net Big Q pool shall be distributed as if no dead heat occurred.

(c) In the second Big Q race only, if there is a dead heat for first involving horses representing three (3) or more betting interests, the net Big Q pool shall be distributed as a profit split to individuals whose combination included any two (2) of the betting interests finishing in the dead heat.

(7) In the second Big Q race only, if there is a dead heat for second involving horses representing two (2) or more betting interests, the Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, except if there is only one (1) covered combination, then;

(b) As a single price pool to individuals combining the winner with the one (1) covered betting interest involved in the dead heat for second, except if there are not any of those wagers, then;

(c) As a profit split to individuals combining the betting interests involved in the dead heat for second, except if there are not any of those wagers, then;

(d) As a profit split to individuals whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second, then;

(e) As a single price pool to all exchange ticket holders for that race, except if there are not any of those tickets, then;

(f) In accordance with subsection (2) of this section.

(8) If a winning ticket for the first half of the Big Q is not presented for exchange prior to the close of betting on the second half Big Q race, the ticket holder shall forfeit all rights to any distribution of the Big Q pool resulting from the outcome of the second race.

(9) If a betting interest in the first half of the Big Q is scratched, the Big Q wagers including the scratched betting interest shall be refunded.

(10)(a) If a betting interest in the second half of the Big Q is scratched, an immediate public announcement and immediate posting on the association's video monitors and website concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.

(b) If tickets have not been exchanged prior to the close of betting for the second Big Q race, the ticket holder shall forfeit all rights to the Big Q pool.

(11) If either of the Big Q races is cancelled prior to the first Big Q race, or the first Big Q race is declared "no contest," the entire Big Q pool shall be refunded on Big Q wagers for that race.

(12) If the second Big Q race is cancelled or declared "no contest" after the conclusion of the first Big Q race, the net Big Q pool shall be distributed as a single price pool to wagers selecting the winning combination in the first Big Q race and all valid exchange tickets. If there are not any of those wagers, the net Big Q pool shall be distributed as described in subsection (2) of this section.

Section 14. Pick-(n) Pools.

(1) The Pick-(n) shall require the selection of the first place finisher in each of (n)-specified races designated by the association and approved by the commission where (n) is any number of races greater than 2. Any changes to the Pick-(n) format

shall be approved by the commission before implementation.

(2) The Pick-(n) pari-mutuel pool consists of amounts contributed for a win only selection in each of (n) races designated by the association. Each individual placing a Pick-(n) wager shall designate the winning horse in each of (n) races comprising the Pick-(n).

(3) The net Pick-(n) pool shall be apportioned in one the following methods based upon the official order of finish:

(a) Method 1, Pick-(n) with Carryover: The net Pick-(n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. If there are not any of those wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests; and the remainder shall be added to the carryover. Where there is no correct selection of the first-place finisher in at least one of the Pick-(n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool.

(b) Method 2, Pick-(n) with 100 percent Carryover: The net Pick-(n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. If there are not any of those wagers, then 100 percent of that day's net pool shall be added to the carryover. Where there is no correct selection of the first-place finisher in at least one of the Pick-(n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool.

(c) Method 3, Pick-(n) with Minor Pool and Carryover: The major share of the net Pick-(n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. The minor share of the net Pick-(n) pool shall be distributed to those who selected the first place finisher in the second greatest number of Pick-(n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all Pick-(n) contests, the minor share of the net Pick-(n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests; and the major share shall be added to the carryover. Where there is no correct selection of the first-place finisher in at least one (1) of the Pick-(n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool.

(d) Method 4, Pick-(n) with No Minor Pool and No Carryover: The net Pick-(n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests, based upon the official order of finish. If there are no winning wagers, the pool shall be refunded.

(e) Method 5, Pick-(n) with Minor Pool and No Carryover: The major share of the net Pick-(n) pool shall be distributed to those who selected the first place finisher in the greatest number of Pick-(n) contests, based upon the official order of finish. The minor share of the net Pick-(n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick-(n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of Pick-(n) contests, the minor share of the net Pick-(n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests. If the greatest number of first-place finishers selected is one (1), the major and minor shares shall be combined for distribution as a single price pool. If there are no winning wagers, the pool shall be refunded.

(f) Method 6, Pick-(n) with Minor Pool and No Carryover: The major share of net Pick-(n) pool shall be distributed to those who selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. The minor share of the net Pick-(n) pool shall be distributed to those who selected the first-

place finisher in the second greatest number of Pick-(n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all Pick-(n) contests, the entire net Pick-(n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests. If there are no wagers selecting the first-place finisher in a second greatest number of Pick-(n) contests, the minor share of the net Pick-(n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the Pick-(n) contests. If there are no winning wagers, the pool shall be refunded.

(g) Method 7, Pick-(n) with Carryover and "Unique Winning Ticket" Provision: The net Pick-(n) pool and carryover, if any, shall be distributed to the holder of a unique winning ticket that selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. If there are multiple tickets selecting the first-place finisher in each of the Pick-(n) contest(s), a share that has been declared by the association and approved by the commission, of the net Pick-(n) shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick-(n) contests and the remaining share shall be added to the carryover. If there are no tickets selecting the first-place finisher in each of the Pick-(n) contests, then; the entire net Pick-(n) pool shall be added to the carryover. Associations may suspend previously approved unique winning ticket wagering with the prior approval of the commission. Any carryover shall be held until the suspended unique winning ticket wagering is reinstated. Where there is no correct selection of the first-place finisher in at least one (1) of the Pick-(n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool. In obtaining authorization for operating the Pick-(n) pool under this subsection, associations shall clearly identify which definition under subsection (16)(b) of this section will be relied upon for determining the existence of a unique winning ticket.

(4) If there is a dead heat for first place in any of the Pick-(n) races involving contestants representing the same betting interest, the Pick-(n) pool shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for first place in any of the Pick-(n) races involving contestants representing two (2) or more betting interests, the Pick-(n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(6) If a betting interest is scratched or is designated to run for purse money only from any leg of the Pick-(n), the association shall use the actual favorite, as evidenced by total amounts wagered in the Win pool at the host association, for the contest at the close of wagering on that contest, and shall be substituted for the betting interest that was scratched or designated to run for purse money only for all purposes, including pool calculations. If the Win pool total for two (2) or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalizer shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.

(7) If for any reason more than half of the races comprising the Pick-(n) are cancelled or declared a "no contest", and there was no previous carryover amount, wagering on the Pick-(n) shall be cancelled and all wagers shall be refunded.

(8) If for any reason more than half of the races comprising the Pick-(n) are cancelled or declared a "no contest", and a previous carryover amount existed, the carryover amount shall be frozen and added to the next scheduled Pick-(n) event. Wagering on the Pick-(n) for the cancelled Pick-(n) wager races shall be cancelled and all wagers shall be refunded.

(9) If the condition of the turf course warrants a change of racing surface in any races of the Pick-(n), and the change has not been disclosed to the public prior to "off time" of the first race of the Pick-(n), the stewards shall declare the changed races an "all win" race for Pick-(n) wagering purposes only. An "all win" race shall assign the winner of that race to each Pick-(n) ticket holder as their

selection for that race.

(10) The Pick-(n) carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the Pick-(n) carryover equals or exceeds the designated cap, the Pick-(n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the Pick-(n) carryover is frozen, 100 percent of the net pool, part of which ordinarily would be added to the Pick-(n) carryover, shall be distributed to those whose selection finished first in the greatest number of Pick-(n) contests for that performance.

(11) A written request for permission to distribute the Pick-(n) carryover on a specific performance may be submitted to the commission. The request shall be for a specified date no greater than one (1) year from the date the request is submitted and contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(12) If the Pick-(n) carryover is designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the Pick-(n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of Pick-(n) contests. The Pick-(n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (11) of this section.

(b) Upon written approval from the commission when there is a change in the carryover cap, a change from one (1) type of Pick-(n) wagering to another, or when the Pick-(n) is discontinued; or

(c) On the closing performance of the meet or split meet.

(13) Notwithstanding subsections (10) and (12) of this section, if for any reason the Pick-(n) carryover must be held over to the corresponding Pick-(n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The Pick-(n) carryover plus accrued interest shall then be added to the net Pick-(n) pool of the following meet on a date and performance designated by the association and approved by the commission.

(14) With the written approval of the commission, the association may contribute to the Pick-(n) carryover a sum of money up to the amount of any designated cap.

(15) The association may suspend previously-approved Pick-(n) wagering with the prior approval of the commission. Any carryover shall be held until the suspended Pick-(n) wagering is reinstated. An association may request approval of a Pick-(n) wager or separate wagering pool for specific performances.

(16) As it relates to any distribution method under subsection (3)(g) of this section which contains a unique winning ticket provision:

(a) A written request for permission to distribute the Pick-(n) unique winning ticket carryover on a specific performance may be submitted to the commission. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. If the Pick-(n) unique winning ticket net pool and any applicable carryover is designated for distribution on a specified date and performance in which there is no unique winning ticket, the entire pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests.

(b) Associations shall clearly identify which selection under subparagraphs 1 and 2 of this paragraph will be relied upon for determining the existence of a unique winning ticket:

1. There is one (1) and only one (1) winning ticket that correctly selected the first place finisher in each of the Pick-(n) contests, based upon the official order of finish, to be verified by the unique serial number assigned by the tote company that issued the winning ticket; or

2. The total amount wagered on one (1) and only one (1) winning combination selecting the first-place finisher in each of the Pick-(n) contests, based up on the official order of finish, is equal to the minimum allowable wager.

(17)(a) Each association shall disclose in its license application

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whether it intends to schedule Pick-(n) races and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers, and
2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.
3. Any changes to the Pick-(n) scheduling shall require prior approval from the commission or its designee.

(18) An association may request permission from the commission to distribute the Pick-(n) carryover on a specific performance. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(19) Upon written approval of the commission, a sum of money up to the amount of any designated cap may be contributed to the Pick-(n) carryover by an association. The association may supply information to the general public regarding the winning dollars in the Pick-(n) pool. The information shall not be selectively distributed. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.

Section 15. Twin Trifecta Pools.

(1) The Twin Trifecta shall require the selection of the first three (3) finishers, in their exact order, in each of two (2) designated races.

(a) Each winning ticket for the first Twin Trifecta race shall be exchanged for a free ticket on the second Twin Trifecta race in order to remain eligible for the second half Twin Trifecta pool.

(b) The winning tickets may only be exchanged at attended ticket windows prior to the second Twin Trifecta race.

(c) Winning first half Twin Trifecta wagers shall receive both an exchange and a monetary payout.

(d) Both of the designated Twin Trifecta races shall be included in only one (1) Twin Trifecta pool.

(2) After wagering closes for the first half of the Twin Trifecta, and the takeout has been deducted from the pool, the net pool shall then be divided into two (2) separate pools: the first half Twin Trifecta pool and the second half Twin Trifecta pool.

(3) In the first Twin Trifecta race only, winning wagers shall be determined using the following precedence based upon the official order of finish for the first Twin Trifecta race:

(a) As a single price pool to individuals whose combination finished in the correct sequence as the first three (3) betting interests, except if there are not any of those wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except if there are not any of those wagers, then;

(d) The entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that race and Twin Trifecta wagering on the second half shall be cancelled.

(4) Except as established in subsection (16) of this section, if no first half Twin Trifecta ticket selects the first three (3) finishers of that race in exact order:

(a) Exchange tickets for the second half Twin Trifecta pool shall not be distributed; and

(b) The second half Twin Trifecta pool shall be retained and added to any existing Twin Trifecta carryover pool.

(5)(a) Tickets from the first half of the Twin Trifecta that correctly select the first three (3) finishers shall be exchanged for tickets selecting the first three (3) finishers of the second half of the Twin Trifecta.

(b) The second half Twin Trifecta pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Twin Trifecta race:

1. As a single price pool, including any existing carryover monies, to individuals whose combination finished in correct sequence as the first three (3) betting interests except if there are not any of those wagers, then;
2. The entire second half Twin Trifecta pool for that race shall

be added to any existing carryover monies and retained for the corresponding second half Twin Trifecta pool of the next consecutive performance.

(c) If a winning first half Twin Trifecta ticket is not presented for cashing and exchange prior to the second half Twin Trifecta race, the ticket holder may still collect the monetary value associated with the first half Twin Trifecta pool except the ticket holder shall forfeit all rights to any distribution of the second half Twin Trifecta pool.

(6) Mutuel entries and mutuel fields shall be prohibited in Twin Trifecta races.

(7) If a betting entry in the first half of the Twin Trifecta is scratched, Twin Trifecta wagers including the scratched betting interest shall be refunded.

(8)(a) If a betting interest in the second half of the Twin Trifecta is scratched, an immediate public announcement and immediate posting on the association's video monitors and website concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.

(b) If tickets have not been exchanged prior to the close of betting for the second Twin Trifecta race, the ticket holder shall forfeit all rights to the second half Twin Trifecta pool.

(9) If, due to a late scratch, the number of betting interests in the second half of the Twin Trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first half winning tickets shall be entitled to the second half pool for that race, except they shall not be entitled to the Twin Trifecta carryover.

(10)(a) If there is a dead heat or multiple dead heats in either the first or second half of the Twin Trifecta, all Twin Trifecta wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be winning wagers.

(b) If the dead heat occurs in the first half of the Twin Trifecta, the payout shall be calculated as a profit split.

(c) If the dead heat occurs in the second half of the Twin Trifecta, the payout shall be calculated as a single price pool.

(11) If the first Twin Trifecta race is canceled or declared "no contest", the entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that race and the second half shall be cancelled.

(12)(a) If the second half Twin Trifecta race is cancelled or declared "no contest", all exchange tickets and outstanding first half winning Twin Trifecta tickets shall be entitled to the net Twin Trifecta pool for that race as a single price pool, except they shall not be entitled to the Twin Trifecta carryover.

(b) If there are no outstanding first half winning Twin Trifecta tickets, the net Twin Trifecta pool shall be distributed as described in subsection (3) of this section.

(13)(a) The Twin Trifecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the Twin Trifecta carryover equals or exceeds the designated cap, the Twin Trifecta carryover shall be frozen until it is won or distributed under the provisions of this administrative regulation.

(b) After the Twin Trifecta carryover is frozen, 100 percent of the net Twin Trifecta pool for each individual race shall be distributed to winners of the first half of the twin Trifecta pool.

(14) A written request for permission to distribute the Twin Trifecta carryover on a specific performance may be submitted to the commission. The request shall contain:

(a) Justification for the distribution;

(b) An explanation of the benefit to be derived; and

(c) The intended date and performance for the distribution.

(15) If the Twin Trifecta carryover is designated for distribution on a specified date and performance, the following precedence shall be followed in determining winning tickets for the second half of the Twin Trifecta after completion of the first half of the Twin Trifecta:

- (a) As a single price pool to individuals whose combination finished in correct sequence as the first three (3) betting interests, except if there are not any of those wagers, then;
- (b) As a single price pool to individuals whose combination

included, in correct sequence, the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except if there are not any of those wagers, then;

(d) As a single price pool to holders of valid exchange tickets, except if there are not any of those wagers, then;

(e) As a single price pool to holders of outstanding first half winning tickets.

(16) For a performance designated to distribute the Twin Trifecta carryover, exchange tickets shall be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first half of the twin Trifecta.

(a) If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-and second-place finishers.

(b) If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, exchange tickets shall be issued for combinations correctly selecting only the first-place finisher.

(c) If there are no wagers selecting the first-place finisher only in the first half of the Twin Trifecta, all first half tickets shall be winning tickets and shall be entitled to 100 percent of that performance's net Twin Trifecta pool, and any existing Twin Trifecta carryover.

(17) The Twin Trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (14) of this section;

(b) Upon written approval from the commission if there is a change in the carryover cap or if the Twin Trifecta is discontinued; or

(c) On the closing performance of the meeting or split meeting.

(18) If, for any reason, the Twin Trifecta carryover shall be held over to the corresponding Twin Trifecta pool of a subsequent meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The Twin Trifecta carryover plus accrued interest shall then be added to the second half Twin Trifecta pool of the following meeting on a date and performance so approved by the commission.

(19) Associations shall not provide information to any individual regarding covered combinations, the number of tickets sold, or the number of valid exchange tickets. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees from processing of pool data.

(20)(a) Each association shall disclose in its license application whether it intends to schedule Twin-Trifecta wagering and, if so, shall disclose:

1. The percentages of the net pool added to the first half pool and the second half pool; and

2. The amount of any cap to be set on the carryover.

(b) Any subsequent changes to the Twin Trifecta scheduling require prior approval from the commission or its designee.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: February 16, 2021

FILED WITH LRC: February 24, 2021 at 8:25 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. EST on May 24, 2021 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you

may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the regulatory framework that applies to the calculation of all pari-mutuel wagers placed on live horse races conducted in the Commonwealth.

(b) The necessity of this administrative regulation: KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation establishes methods by which racing associations in the Commonwealth shall calculate payouts on winning pari-mutuel wagers on live horse races conducted in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate conditions under which horse 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 wagering on horse races under the pari-mutuel system of wagering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation establishes methods by which racing associations in the Commonwealth shall calculate payouts on winning pari-mutuel wagers on live horse races conducted in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment will clarify that Section 2 of this regulation applies only to live horse races, rather than live horse races and historical horse races. This amendment also clarifies that the term "takeout" is synonymous with the term "commission."

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify previously ambiguous aspects of this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate conditions under which horse 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 wagering on horse races under the pari-mutuel system of wagering.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation clarifies the methods by which racing associations in the Commonwealth shall calculate payouts on winning pari-mutuel wagers on live horse races conducted in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, all licensed participants in racing in the Commonwealth, all patrons who place pari-mutuel wagers on live horse races conducted in the Commonwealth, and the commission.

(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: No new or additional action is expected to be required to comply with this regulatory amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the entities: Kentucky's eight currently licensed racing associations, any applicant for a racing association license, all licensed participants in racing in the Commonwealth, all patrons who place pari-mutuel wagers on live horse races conducted in the Commonwealth, and the commission will benefit from clearly defined regulatory guidelines concerning pari-mutuel wagering and the calculation and distribution of pools.

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

(a) Initially: This proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(b) On a continuing basis: This proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(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 proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

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 Horse Racing Commission will be impacted by this administrative regulation, as well as the licensed thoroughbred and standardbred racing associations located in the Commonwealth of Kentucky, and the licensed advance deposit wagering companies operating in the Commonwealth.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 230.361.

(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? It is anticipated that there will be no additional net cost or revenue generated from 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? It is anticipated that there will be no additional net cost or revenue generated from this administrative regulation.

(c) How much will it cost to administer this program for the first year? It is anticipated that there will be no additional net cost or revenue generated from this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that there will be no additional net cost or revenue generated from this 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: NA

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 8:010. Medication; testing procedures; prohibited practices.

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260(8), 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(8), and 230.320 authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions.

(1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens from horses taken under the supervision of the commission veterinarian.

(4) "Location under the jurisdiction of the commission" means a licensed race track or a training center as described in KRS 230.260(5).

(5) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, 810 KAR 8:020, 810 KAR 8:025, or 810 KAR 8:040, was present in the sample.

(a) For the drugs, medications, or substances listed in this administrative regulation, [e] 810 KAR 8:020, or 810 KAR 8:025, for which an established concentration level is provided, it shall be necessary to have a finding in excess of the established concentration level as provided for the finding to be considered a positive finding.

(b) Positive finding also includes:

1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; and

2. Substances foreign to a horse that cause interference with testing procedures.

(6) "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

(7) "Split sample" means the split sample portion of the biologic

specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(8) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen from horses taken under the supervision of the commission veterinarian.

(9) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining biologic specimens for testing.

Section 2. Use of Medication.

(1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as expressly permitted in 810 KAR Chapter 8, while participating in a race (betting or non-betting), qualifying race, or time trial, it shall be a violation for a horse to carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is foreign to the horse; or

(b) Might mask the presence of a prohibited drug, or obstruct testing procedures.

(3) It shall be a violation for therapeutic medications to be present in excess of established threshold concentrations established in this administrative regulation, ~~[or in] 810 KAR 8:020, or in 810 KAR 8:025~~. The thresholds for permitted NSAIDs are established in Section 8 of this administrative regulation.

(4) Except as provided by paragraphs (a), (b), and (c) of this subsection, it shall be a violation for a substance to be present in a horse in excess of a concentration at which the substance could occur naturally. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(a) Gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms per milliliter in serum or plasma.

(b) Cobalt shall not be present in a concentration greater than twenty-five (25) parts per billion in serum or plasma.

(c) Free prednisolone shall not be present in a concentration greater than ten (10) nanograms per milliliter in urine.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or non-betting), qualifying race, or time trial, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) A biologic specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race (betting or non-betting), qualifying race, or time trial; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 8:020, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 810 KAR 8:030.

Section 3. Treatment Restrictions.

(1) Except as provided in Section 4 of this administrative regulation, only a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall administer by injection a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectable substance allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as established in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, only a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission may possess a hypodermic needle, syringe, or injectable of any kind at a location under the

jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission has a medical condition that makes it necessary to possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards or judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards or judges may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

(7) Electronic therapeutic treatments, other than nebulization, shall not be administered to a horse within twenty-four (24) hours prior to post time of a race in which the horse is entered.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Anti-ulcer Medications.

The following anti-ulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

(1) Cimetidine (Tagamet): eight (8) to twenty (20) milligrams per kilogram;

(2) Omeprazole (Gastrogard): two and two-tenths (2.2) grams;

(3) Ranitidine (Zantac): eight (8) milligrams per kilogram; and

(4) Sucralfate: two (2) to four (4) grams.

Section 6. Furosemide Use on Race Day.

(1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race, qualifying race, or time trial, except as provided in subsection (6) of this section.

(2) Furosemide shall only be administered prior to a race, qualifying race, or time trial by:

(a) The commission veterinarian; or

(b) A licensed veterinarian approved by the commission to perform the administration if the commission veterinarian is unavailable. If the furosemide is administered by an approved licensed veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.

(3) Except as provided in subsection (6) of this section, furosemide may be used if administered:

(a) At a location under the jurisdiction of the commission where the horse is scheduled to race;

(b) By a single intravenous injection, not less than four (4) hours prior to post time for the race, qualifying race, or time trial in which the horse is entered; and

(c) In a dosage not less than 150 milligrams and not more than 500 milligrams.

(4) The specific gravity of a post-race urine sample shall not be below one and one one-hundredths (1.010). If the specific gravity of the post-race urine sample is determined to be below one and one one-hundredths (1.010), a quantification of furosemide in serum or plasma shall be performed by the commission laboratory.

If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the serum or plasma sample. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(5) The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies. The commission shall maintain records documenting the basis for its determination, and if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly. The cost shall be prominently posted in the racing office.

(6)(a) A two (2) year old or stakes horse shall not be administered any drug, medication or other substance, including furosemide, within twenty-four (24) hours of the post time of the race in which the horse is entered. Participation by the horse shall not affect the status of the participating horse on the official authorized bleeder medication list.

(b) The implementation and enforcement of the prohibition in paragraph (a) of this subsection shall begin on:

1. January 1, 2020 for all two (2) year olds; and
2. January 1, 2021 for all horses entered to run in a stakes race; including the races comprising the Breeders' Cup World Championships and the races designated as graded stakes by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association.

(c) A concentration of furosemide greater than one and zero-tenths (1.0) nanograms per milliliter in serum in a post-race sample shall constitute a violation of this administrative regulation.

Section 7. Furosemide Eligibility.

(1)(a) Except as provided in Section 6(6) of this administrative regulation, a horse shall be eligible to race with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide. Notice that a horse eligible to receive furosemide will race with or without furosemide shall be made at the time of entry to ensure public notification, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation if notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine, serum, or plasma does not show a detectable concentration of furosemide in the post-race urine, serum, or plasma.

(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interest to race with furosemide and the licensed trainer or a licensed veterinarian complies with the requirements of this section.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs).

(1) NSAIDs shall not be administered within forty-eight (48) hours prior to post time for the race in which the horse is entered. The detection in a post-race sample of blood of a detectable concentration of an NSAID, except as allowed by subsection (2) of this section, shall constitute a violation of this administrative regulation. The detection in a post-race sample of blood of more than one (1) of phenylbutazone, flunixin, and ketoprofen in excess of the concentrations permitted by subsection (2) of this section shall constitute a violation of this administrative regulation.

(2)(a) A finding of phenylbutazone below a concentration of three-tenths (0.3) microgram per milliliter of serum or plasma shall not constitute a violation of this section.

(b) A finding of flunixin below a concentration of five (5) nanograms per milliliter of serum or plasma shall not constitute a violation of this section.

(c) A finding of ketoprofen below a concentration of two (2) nanograms per milliliter of serum or plasma shall not constitute a violation of this section.

Section 9. Anabolic Steroids.

(1) An exogenous AAS shall not be present in a horse that is racing. The detection of an exogenous AAS or metabolic derivative in a post-race sample shall constitute a violation of this administrative regulation.

(2) The detection in a post-race sample of an endogenous AAS or metabolic derivative where the concentration of the AAS or metabolic derivative exceeds naturally occurring physiological levels shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone:

1. In male horses other than geldings, free and conjugated boldenone fifteen (15) nanograms per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma; and

2. In geldings and female horses, free and conjugated boldenone one (1) nanogram per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma.

(b) Nandrolone:

1. In geldings, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone twenty-five (25) picograms per milliliter in serum or plasma;

2. In fillies and mares, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone twenty-five (25) picograms per milliliter in serum or plasma; and

3. In male horses other than geldings, forty-five (45) nanograms per milliliter of metabolite, 5 α -estrane-313, 17 α -diol in urine or a ratio in urine of 5 α -estrane-313, 17 α -diol to 5 α -estrane-313, 17 α -diol of >1:1.

(c) Testosterone:

1. In geldings, free and conjugated testosterone twenty (20) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma; and

2. In fillies and mares (unless in foal), free and conjugated testosterone fifty-five (55) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma.

(3) The gender of the horse from which a post-race biologic specimen is collected shall be identified to the commission veterinarian and the testing laboratory.

Section 10. Clenbuterol.

(1) Clenbuterol use is prohibited in racing and training unless the following conditions are met:

(a) The prescription for clenbuterol is made for a specific horse based upon a specific diagnosis.

(b) The veterinarian must provide a copy of the treatment sheet to the Equine Medical Director or his or her designee for review within twenty-four (24) hours of any administration of clenbuterol.

(c) A horse administered clenbuterol shall be placed on the veterinarian's list for a minimum of twenty-one (21) days after the date of last administration. The horse must meet all conditions for removal from the list, including blood and urine sampling taken after the twenty-one (21) day period. Both samples must have no detectable clenbuterol.

(d) A horse shall not be eligible to race until it has completed all the requirements in paragraph (c) of this subsection.

(2) If clenbuterol is detected in a horse's post-race or out of competition sample and appropriate notification as outlined above was not completed, the horse shall immediately be placed on the veterinarian's list pending the outcome of an investigation. The horse shall be required to meet all conditions for removal from the veterinarian's list outlined in paragraph (c) of this subsection.

Section 11. Test Barn.

(1) A licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient:

(a) In size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens; and

(b) In structural design to prevent entry by unauthorized persons.

(3) The test barn shall be under the supervision and control of the Chief Racing Veterinarian or his or her designee, and no access to individuals other than commission personnel shall be permitted unless with the permission of the Chief Racing Veterinarian or his or her designee. If association personnel require immediate access to the test barn due to fire or other emergency, the association shall report the access to commission officials as soon as possible after the emergency.

Section 12[44]. Sample Collection, Testing and Reporting.

(1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 810 KAR 8:060, and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian, in consultation with the commission laboratory shall determine a minimum sample requirement which shall be uniform for each horse and which shall be separated into primary and split samples.

(3) An owner or trainer may request that a split sample be tested by a split sample laboratory approved by the commission.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer; and

2. Applied only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn only with the permission of and in the presence of the commission veterinarian or his designee.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the stewards and judges shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards or judges shall conduct a hearing as soon as possible after the conclusion of an investigation of a positive finding. A person charged with a violation may request a continuance, which the stewards or the judges may grant for good cause shown.

Section 13[42]. Storage and Shipment of Split Samples.

(1) Split samples shall be secured and made available for further testing in accordance with the procedures established in this subsection:

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as established in Section 12[44] of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission.

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection.

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is

opened.

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log.

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select a laboratory solicited and approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards or judges within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

Section 14[43]. Split Sample Chain of Custody.

(1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the owner, trainer, or designee thereof and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy to the owner, trainer, or designee, if requested.

Section 15[44]. Medical Labeling.

(1) A drug or medication that, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(2) A drug or medication shall bear a prescription label that is securely attached and clearly ascribed to show the following:

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- (a) The name of the product;
- (b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;
- (c) The name of the horse for which the product is intended or prescribed;
- (d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and
- (e) The name of the trainer to whom the product was dispensed.

Section 16[15]. Trainer Responsibility.

(1) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the condition of a horse in his or her care.

(2) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in a horse in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission to the stewards or judges and the commission veterinarian and ensuring compliance with Section 23[22] of this administrative regulation and 810 KAR 4:010, Section 14, governing postmortem examinations;

(i) Complying with the medication and recordkeeping requirements in subsection (6) of this section;

(j) Promptly notifying the stewards or judges and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as established in Section 21[29] of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed by 810 KAR 2:010, Section 4(1)(l);

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at the time prescribed by racing officials before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling or preparation of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the judges or stewards pursuant to 810 KAR 4:100, Section 3(2)(f); and

(p) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

(6)(a) A trainer shall maintain a clear and accurate record of any treatment administered to a horse in his or her care.

(b) A trainer shall ensure the transfer of copies of all medical records to the subsequent owner and trainer of a horse.

(c) Failure to comply with this subsection may result in the imposition of penalties pursuant to 810 KAR 8:030.

(d) The stewards and judges may at any time require presentation of a horse's medical records.

Section 17[16]. Licensed Veterinarians.

(1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the stewards or judges.

(2) A veterinarian shall report to the stewards, judges or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 18[17]. Veterinary Reports.

(1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards, judges or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 810 KAR 8:030.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as established in Section 21[29] of this administrative regulation shall report this fact immediately to the commission veterinarian or to the stewards or judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission.

Section 19[18]. Veterinarian's List.

(1) The commission veterinarian shall maintain a list of horses

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determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a race (betting or non-betting), qualifying race, time trial, or for the following time periods:

- (a) First incident - fourteen (14) days;
- (b) Second incident within a 365-day period - thirty (30) days;
- (c) Third incident within a 365-day period - 180 days; and
- (d) Fourth incident within a 365-day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as established in this section.

Section 20[19]. Distribution of Purses, Barn Searches, and Retention of Samples.

(7) For all races, purse money in thoroughbred and other flat racing shall be paid or distributed pursuant to the process provided in 810 KAR 2:070, Section 27(3), and in standardbred racing, no later than twenty-four (24) hours after notice from the commission that a final laboratory report has been issued.

(8) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(9) After the commission laboratory issues a positive finding the executive director of the commission or the stewards or judges may authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(10) If the purse money has been distributed, the stewards or judges shall order the money returned immediately to the association upon notification from the commission laboratory that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(11) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 21[20]. Other Prohibited Practices Constituting a Violation of this Administrative Regulation.

(1) A drug, medication, substance, or device shall not be possessed or used by a licensee, or his designee or agent, within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider or driver.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) The following blood-doping agents shall not be possessed

or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoietin;

(c) Oxyglobin;

(d) Hemopure; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied that may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a rider or driver.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the conditions established in this subsection are met.

(a) A treated horse shall not race for a minimum of ten (10) days following treatment.

(b) A veterinarian licensed to practice by the commission shall administer the treatment.

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds.

(d) Prior to administering the treatment, a report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy.

(6) Other than furosemide, an alkalinizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) A serum or plasma total carbon dioxide (TCO₂) level shall not exceed thirty-seven (37.0) millimoles per liter; except, a violation shall not exist if the TCO₂ level is found to be normal for the horse following the quarantine procedure established in Section 22[24] of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 22[24]. TCO₂ Testing and Procedures.

(1)(a) The stewards, judges, or commission veterinarian may order the pre-race or post-race collection of blood specimens from a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as selected by the stewards or judges, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race sampling shall be done at a reasonable time, place, and manner directed by the chief state steward in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO₂ concentration in the serum or plasma of the horse. If the commission laboratory determines that the TCO₂ level exceeds thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO₂ may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian; however, the collection and testing of a split sample for TCO₂ testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO₂ is determined to exceed thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty and the licensed owner or trainer of the horse certifies in writing to the stewards or judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the steward or judges, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission veterinarian is satisfied that the horse's level of TCO₂, as registered in the original test, is physiologically normal for that horse, the stewards or judges:

1. Shall permit the horse to race; and
2. May require repetition of the quarantine procedure established in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO₂ level is physiologically normal.

Section 23[22]. Postmortem Examination.

(1) A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as provided in 810 KAR 4:010, Section 14.

(2) The commission shall bear the cost of an autopsy that is required by the commission.

(3) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 24[23]. Corticosteroids.

(1) A corticosteroid shall not be administered intracardially within fourteen (14) days before post time for the race in which the horse is entered.

(2) The presence of a detectable concentration of more than one (1) corticosteroid in a post-race sample of blood, urine, or any combination of blood and urine shall constitute a violation of this section.

Section 25[24]. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Veterinary Report of Horses Treated to be Submitted Daily", KHRC 8-010-1, 11/2018;
- (b) "Split Sample Chain of Custody Form", KHRC 8-010-2, 11/2018; and
- (c) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 8-010-3, 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, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at <http://khrc.ky.gov>.

JONATHAN RABINOWITZ, Chair
KERRY HARVEY, Secretary

APPROVED BY AGENCY: March 4, 2021

FILED WITH LRC: March 5, 2021 at 12:43 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at

9:00 a.m. on May 24, 2021 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for pre- and post-race testing at licensed racing associations in the Commonwealth. The regulation sets forth specific prohibitions concerning medications, establishes the primary and split sample collection process and notification requirements, sets forth the trainer responsibility rule, establishes the veterinarian's list, contains provisions concerning veterinarians and medical labeling, and sets forth the procedures concerning search and seizure on racing association grounds.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications during race meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to horses participating in a race. This administrative regulation establishes the requirements, prohibitions, and procedures pertaining to the use of medications on and leading up to racing days during horse race meetings in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on racing days and in a manner that is consistent with the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: This proposed amendment will create a new section of the regulation to address clenbuterol. This section will specify that clenbuterol is prohibited, unless certain conditions are met. Those conditions include, but are not limited to: (1) the prescription for clenbuterol is made for a specific horse based upon a specific diagnosis; (2) the veterinarian must provide a copy of the horse's treatment sheet to the Equine Medical Director or his/her designee within 24 hours of any clenbuterol administration; and (3) a horse administered clenbuterol must be placed on the veterinarian's list for a minimum of 21 days after its last administration. The horse must meet all conditions for removal from the list, including blood and urine sampling after the 21-day period. Both samples must have no detectible clenbuterol.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to conform to an emerging industry consensus about proper medication usage in horse racing. The KHRC's regulation is necessary to prevent against misuse, but still allow therapeutic use of this medication in horses that have a demonstrated need for it.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to horses participating in a race. The amendment to this administrative regulation establishes additional requirements, prohibitions, and procedures pertaining to the use of medications on and leading up to racing days during horse race meetings in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 230.215(2), 230.260(8), KRS 230.240(2) by establishing appropriate requirements and prohibitions pertaining to the use of medications in horse racing in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred and standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In 2017, the commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

(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: Participants in horse racing, and especially owners, trainers, and veterinarians, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the use of medications in horse racing. Trainers, owners, and veterinarians will have to alter their medication administration practices to comply with the amendments to this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No new costs are anticipated to comply with this administrative regulation, as the cost of the tests to exit the veterinarian's list are free to the owners and trainers.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

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

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

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

increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

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 Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.320, 230.370.

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: NA

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 8:020. Drug, medication, and substance classification schedule [and withdrawal guidelines].

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the drug classification schedule in effect in Kentucky[and the withdrawal guidelines] for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule[~~], KHRC~~

8-020-1,]

(1) This administrative regulation shall establish the respective classifications of all substances contained herein[therein. The Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian, KHRC 8-020-2, shall provide certain mandatory treatment requirements and guidance and advice on withdrawal intervals as contained therein].

(2)(a) Class A drugs, medications, and substances are those that:

1. Have the highest potential to influence performance in the equine athlete, regardless of their approval by the United States Food and Drug Administration; or

2. Lack approval by the United States Food and Drug Administration, but have pharmacologic effects similar to certain Class B drugs, medications, or substances that are approved by the United States Food and Drug Administration.

(b) Class A shall include:

Acecarbromal
Acetophenazine
Adinazolam
Alcuronium
Alfentanil
Almotriptan
Alphaprodine
Alpidem
Alprazolam
Alprenolol
Althesin
Aminorex
Amisulpride
Amitriptyline
Amobarbital
Amoxapine
Amperozide
Amphetamine
Amyl nitrite
Anileridine
Anilopam
Apomorphine
Aprobarbital
Arecoline
Atracurium
Atomoxetine
Azacylonol
Azaperone
Barbital
Barbiturates
Bemegride
Benazepril
Benperidol
Bentazepam
Benzactizine
Benzocetamine
Benzonatate
Benzphetamine
Benztropine
Benzylpiperazine
Bethanidine
Biperiden
Biriperone
Bitolterol
Bolasterone
Boldione
Brimondine
Bromazepam
Bromfenac
Bromisovalum
Bromocriptine
Bromperidol
Brotizolam
Bufexamac
Bupivacaine

Buprenorphine
Buspirone
Bupropion
Butabartital
Butacaine
Butalbital
Butanilicaine
Butaperazine
Butoctamide
Calusterone
Camazepam
Cannabinoids, Synthetic
Captadiame
Carazolol
Carbidopa
Carbromal
Carfentanil
Carphenazine
Carpipramine
Cathinone
Chloral betaine
Chloral hydrate
Chloraldehyde
Chloralose
Chlordiazepoxide
Chlorhexadol
Chlormezanone
Chloroform
Chloroprocaine
Chlorproethazine
Chlorpromazine
Chlorprothixene
Cimaterol
Citalopram
Clibucaine
Clobazam
Clocapramine
Clomethiazole
Clomipramine
Clonazepam
Clorazepate
Clormecaine
Clostebol
Clothiapine
Clotiazepam
Cloxazolam
Clozapine
Cobratoxin
Cocaine
Codeine
Conorphone
Conotoxin
Corticaine
Crotetamide
Cyamemazine
Cyclandelate
Cyclobarbital
Darbepoetin
Decamethonium
Dehydrochloromethy-
testosterone
Delorazepam
Demoxepam
Dermorphin
Desipramine
Desoxymethyl-
testosterone
Dextromoramide
Dezocine
Diamorphine
Dichloralphenazone
Diethylpropion
Diethylthiambutene

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Dihydrocodeine
Dimeflin
Diprenorphine
Divalproex
Dietyazine
Donepezil
Dopamine
Doxacurium
Doxapram
Doxazosin
Doxefazepam
Doxepin
Droperidol
Duloxetine
Eletriptan
Enalapril
Enciprazine
Endorphins
Enkephalins
Ephedrine
Epibatidine
Epinephrine
Ergaloid Mesylates
Erthritol tetranitrate
Erythropoietin
Eszopiclone
Estazolam
Ethamivan
Ethanol
Ethchlorvynol
Ethinamate
Ethoheptazine
Ethopropazine
Ethosuximide
Ethylisobutrazine
Ethylmorphine
Ethylnorepinephrine
Ethylphenidate
Etidocaine
Etifoxin
Etizolam
Etodroxizine
Etomidate
Etorphine HCL
Fenarbamate
Fenfluramine
Fentanyl
Fluanisone
Fludiazepam
Flunitrazepam
Flupromazine
Fluoresone
Fluoxetine
Flupenthixol
Flupirtine
Flurazepam
Fluspirilene
Flutoprazepam
Fluvoxamine
Formebolone
Fosinopril
Furzabol
Galantamine
Gallamine
Gepirone
Gestrinone
Glutethimide
Guanadrel
Guanethidine
Halazepam
Haloperidol
Haloxazolam
Hemoglobinlutamers

Hemopure
Hexafluorenum
Hexobarbital
Homophenazine
Hydrocodone
Hydromorphone
Hydroxyamphetamine
Ibomal
Iloprost
Imipramine
Inositol
Trispyrophosphate
Ipsapirone
Irbesarten
Isocarboxazid
Isomethadone
Isoproterenol
Ketazolam
Ketorolac
Lamotrigine
Lenperone
Levodopa
Levomethorphan
Levorphanol
Lisinopril
Lithium
Lobeline
Lofentanil
Loflazepate, Ethyl
Loprazolam
Lorazepam
Lormetazepam
Loxapine
Mabuterol
Maprotiline
Mazindol
Mebutamate
Meclofenoxate
Medazepam
Meldonium
Melperone
Memantine
Meparfynol
Mepazine
Meperidine
Mephenoalane
Mephentermine
Mephentoin
Mephobarbital
Meprobamate
Mesoridazine
Mestanolone
Mesterolone
Metaclazepam
Metaraminol
Metazocine
Methacholine
Methadone
Methamphetamine, when detected exclusively as d-
methamphetamine or in combination with l-methamphetamine
Methandriol
Methandrostenolone
Methaqualone
Metharbital
Methasterone
Methcathinone
Methenolone
Methixene
Methohexital
Methotrimeprazine
Methoxamine
Methoxyphenamine
3-Methoxytyramine

[Methyl-1-testosterone](#)
[Methylandrostenediol](#)
[Methyldienolone](#)
[Methyldopa](#)
[Methylene](#)
 [Dioxyprovalene](#)
 (MDPV: 3,4
 [Methylenedioxy-](#)
 [pyrovalerone](#))
[Methylhexanamine](#)
[Methylnortestosterone](#)
[Methylphenidate](#)
[Methyprylon](#)
[Metocurine](#)
[Metomidate](#)
[Metopon](#)
[Mexazolam](#)
[Mirtazapine](#)
[Mivacurium](#)
[Modafinil](#)
[Molindone](#)
[Moperone](#)
[Morphine](#)
[Mosapramine](#)
[Muscarine](#)
[Naepaine](#)
[Nalbuphine](#)
[Nalorphine](#)
[Nebivolol](#)
[Nefazodone](#)
[Nefopam](#)
[Nikethamide](#)
[Nimetazepam](#)
[Nitrazepam](#)
[Norbolethone](#)
[Norclostebol](#)
[Nordiazepam](#)
[Norepinephrine](#)
[Norethandrolone](#)
[Nortriptyline](#)
[Nylidrin](#)
[Olanzapine](#)
[Olmesartan](#)
[Oxabolone](#)
[Oxazepam](#)
[Oxazolam](#)
[Oxcarbazepine](#)
[Oxilofrine](#)
[Oxprenolol](#)
[Oxycodone](#)
[Oxymesterone](#)
[Oxymorphone](#)
[Oxypertine](#)
[Paliperidone](#)
[Pancuronium](#)
[Papaverine](#)
[Paraldehyde](#)
[Paramethadione](#)
[Pargyline](#)
[Paroxetine](#)
[Pemoline](#)
[Penfluridol](#)
[Pentaerythritol](#)
[Pentobarbital](#)
[Pentylene-tetrazol](#)
[Perazine](#)
[Perfluorocarbons](#)
[Perfluorodecahydro-](#)
 [naphthalene](#)
[Perfluorodecalin](#)
[Perfluorooctylbromide](#)
[Perfluorotripro-](#)
 [pylamine](#)

[Periciazine](#)
[Perindopril](#)
[Perlazine](#)
[Perphenazine](#)
[Phenaglycodol](#)
[Phenazocine](#)
[Phencyclidine](#)
[Phendimetrazine](#)
[Phenelzine](#)
[Phenmetrazine](#)
[Phenobarbital](#)
[Phentermine](#)
[Physostigmine](#)
[Picrotoxin](#)
[Piminodine](#)
[Pimozide](#)
[Pinazepam](#)
[Pipamperone](#)
[Pipecuronium](#)
[Pipequaline](#)
[Piperacetazine](#)
[Piperocaine](#)
[Pipotiazine](#)
[Pipradrol](#)
[Piquindone](#)
[Piritramide](#)
[Prazepam](#)
[Procaterol](#)
[Prochlorperazine](#)
[Propanidid](#)
[Propiomazine](#)
[Propionylpromazine](#)
[Propiram](#)
[Propofol](#)
[Propoxycaïne](#)
[Prostanozol](#)
[Prothipendyl](#)
[Protokylol](#)
[Protriptyline](#)
[Proxibarbitol](#)
[Pyrithyldione](#)
[Quazipam](#)
[Quetiapine](#)
[Quinapril / Quinaprilat](#)
[Quinbolone](#)
[Racemethorphan](#)
[Racemorphan](#)
[Raclopride](#)
[Ractopamine](#)
[Ramipril / Ramiprilat](#)
[Remifentanil](#)
[Remoxipride](#)
[Rilmazafone](#)
[Risperidone](#)
[Ritanserine](#)
[Rivastigmine](#)
[Rocuronium](#)
[Ropivacaine](#)
[Secobarbital](#)
[Selegiline](#)
[Sertraline](#)
[Sildenafil](#)
[Snake Venoms](#)
[Somatrem](#)
[Somatropin](#)
[Spiclomazine](#)
[Spiperone](#)
[Spirapril / Spiraprilat](#)
[Stenbolone](#)
[Succinylcholine](#)
[Sufentanil](#)
[Sulfondiethylmethane](#)
[Sulfonmethane](#)

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Sulforidazine
Sulpiride
Sultopride
Tadalafil
Talbutal
Tandospirone
Temazepam
Terazosin
Tetrabenazine
Tetracaine
Tetrahydrogestrinone
Tetrazepam
Thebaine
Thialbarbital
Thiamylal
Thiethylperazine
Thiopental
Thiopropazate
Thiopropazine
Thioridazine
Thiothixene
Tiapride
Tiletamine
Timiperone
Tofisopam
Topirimate
Torseamide
Tranlycypromine
Trazodone
Tretoquinol
Triazolam
Tribromethanol
Tricaine
Trichloroethanol
Trichloethylene
Triclofos
Trifluomeprazine
Trifluoperazine
Trifluoperidol
Triflupromazine
Trihexylphenidyl
Trimethaphan
Trimipramine
Tubocurarine
Tybamate
Urethane
Valerenic Acid
Valnoctamide
Vardenafil
Venlafaxine
Veralipride
Vercuronium
Viloxazine
Vinbarbital
Vinylbital
Zaleplon
Ziconotide
Zilpaterol
hydrochloride
Ziprasidone
Zolazepam
Zolpidem
Zopiclone
Zotepine
Zuclopenthixol

(3)(a) Class B drugs, medications, and substances are those that:

1. Are approved by the United States Food and Drug Administration and have a high potential to influence performance in the equine athlete, but less potential than Class A drugs, medications, and substances that are classified at that level because they have the highest potential to influence performance;

or

2. Lack approval by the United States Food and Drug Administration, but have pharmacologic effects similar to certain Class C drugs, medications, or substances that are approved by the United States Food and Drug Administration.

(b) Class B shall include:

2-Aminoheptane
Acebutolol
Acepromazine
Acetanilid
Acetophenetidin
Adrenochrome
monosemicarbazone
salicylate
Albuterol
Alclofenac
Aldosterone
Ambenonium
Ambroxol
Amiloride
Aminophylline
Aminopyrine
Amiodarone
Amisometradine
Amitraz
Amlodipine
Amrinone
Anisotropine
Antipyrine
Apazone
Aprindine
Arformoterol
Articaine
Atenolol
Atropine
Baclofen
Bendroflumethiazide
Benoxaprofen
Benzocaine
Benzthiazide
Bepridil
Betaxolol
Bisoprolol
Boldenone
Bretylium
Bromhexine
Bromodiphenhydramine
Brompheniramine
Bumetanide
Butorphanol
Butoxycaine
Caffeine
Candesartan
Captopril
Carbachol
Carbamezapine
Carbazochrome
Carbinoxamine
Carisoprodol
Carprofen
Carteolol
Carticaine
Carvedilol
Celecoxib
Chlormerodrin
Chlorothiazide
Chlorpheniramine
Chlorthalidone
Chlorzoxazone
Cilostazol
Clanobutin
Clemastine
Clenbuterol

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Clidinium
Clofenamide
Clonidine
Colchicine
Cyclizine
Cyclobenzaprine
Cyclothiazide
Cyrimine
Cyproheptadine
Danazol
Deracoxib
Detomidine
Dextromethorphan
Dextropropoxyphene
Diazepam
Diazoxide
Dibucaine
Diflunisal
Digitoxin
Digoxin
Dihydroergotamine
Diltiazem
Dimethisoquin
Diphenhydramine
Diphenoxylate
Dipyridamole
Disopyramide
Dobutamine
Doxylamine
Dromstanolone
Dyphylline
Edrophonium
Eltenac
Enalapril
Ergotamine
Esmolol
Etamiphylline
Etanercept
Ethacrynic acid
Ethotoin
Ethylestrenol
Etodolac
Felbamate
Felodipine
Fenbufen
Fenclozic acid
Fenoldopam
Fenoprofen
Fenoterol
Fenspiride
Fentiazac
Flecainide
Floctafenine
Flufenamic acid
Flumethiazide
Flunarizine
Fluoroprednisolone
Fluoxymesterone
Fluphenazine
Flurbiprofen
Formoterol
Fosphenytoin
Gabapentin
Guanabenz
Heptaminol
Hexocyclium
Hexylcaine
Homatropine
Hydralazine
Hydrochlorthiazide
Hydroflumethiazide
Hydroxyzine
Ibutilide

Indomethacin
Infliximab
Ipratropium
Isoetharine
Isometheptene
Isopropamide
Isosorbide dinitrate
Isoxicam
Isradipine
Kebuzone
Ketamine
L-methamphetamine, when detected by itself and not in combination with d-methamphetamine
Labetalol
Levobunolol
Lidocaine
Loperamide
Losartan
Mecamylamine
Meclizine
Medetomidine
Mefenamic acid
MelMepenzolate
Mephenesin
Mepivacaine
Meralluride
Merbaphen
Mercaptomerin
Mercumatilin
Mersalyl
Metaproterenol
Metaxalone
Methantheline
Methapyrilene
Methdilazine
Methosuxamide
Methotrexate
Methscopolamine
Methylatropine
Methylchlorthiazide
Methysergide
Methyltestosterone
Metiamide
Metolazone
Metoprolol
Mexilitine
Mibefradil
Mibolerone
Midazolam
Midodrine
Milrinone
Minoxidil
Moexipriloxicam
Nadol
Naloxone
Naltrexone
Nandrolone
Naphazoline
Naratriptan
Neostigmine
Nicardipine
Nifedipine
Niflumic acid
Nimesulide
Nimodipine
Nitroglycerin
Nortestosterone
Orphenadrine
Oxandrolone
Oxaprozin
Oxymetazoline
Oxymetholone
Oxyphenyclimine

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Oxyphenonium
Penbutolol
Pentazocine
Pergolide
Phenacemide
Phenoxybenzamine
Phensuximide
Phentolamine
Phenylephrine
Phenylpropanolamine
Phenytoin
Pindolol
Pirbuterol
Piretanide
Piroxicam
Polythiazide
Prazosin
Prilocaine
Primidone
Procainamide
Procaine
Procyclidine
Promazine
Promethazine
Propafenone
Propanteline
Propentophylline
Propranolol
Propylhexedrine
Pseudoephedrine
Pyridostigmine
Pyrilamine
Quinidine
Reserpine
Ritodrine
Rizatriptan
Rofecoxib
Romifidine
Salmeterol
Scopolamine
Sibutramine
Sotalol
Spironolactone
Stanozolol
Strychnine
Sumatriptan
Telmisartan
Tenoxicam
Tepoxalin
Terbutaline
Terfenadine
Testolactone
Testosterone
Tetrahydrozoline
Theobromine
Theophylline
Thiosalicylate
Thiphenamil
Tiaprofenic acid
Timolol
Tocainide
Tolazoline
Tolmetin
Tramadol
Trandolapril
Trenbolone
Triamterene
Tridihexethyl
Trimeprazine
Trimethadione
Tripelennamine
Tripolidine
Valdecocixib

Valsartan
Vedaprofen
Verapamil
Xylazine
Xylometazoline
Yohimbine
Zolmitriptan
Zomepirac
Zonisamide

(4)(a) Class C drugs, medications, and substances are those that:

(1) Are approved by the United States Food and Drug Administration and have a lesser potential to influence performance in the equine athlete than Class A drugs, medications, and substances and those Class B drugs, medications, and substances that are classified at that level because they have a high potential to influence performance and are approved by the United States Food and Drug Administration; or

(2) Lack approval by the United States Food and Drug Administration, but have pharmacologic effects similar to certain Class D drugs, medications, or substances that are approved by the United States Food and Drug Administration.

(b) Class C shall include:

Acenocoumarol
Acetaminophen
Acetazolamide
Acetylsalicylic acid
Alclometasone
Amcinonide
Aminocaproic acid
Beclomethasone
Benoxinate
Betamethasone
Bethanechol
Budesonide
Butamben
Camphor
Cetirizine
Chlorophenesin
Chloroquine
Ciclesonide
Clobetasol
Clocortolone
Cortisone
Cyclomethylcaine
Dantrolene
Dembroxol
Deoxycorticosterone
Desonide
Desoximetasone
Dexamethasone
Dibucaine
Dichlorphenamide
Diclofenac
Diflorasone
Diflucortolone
Dimethylsulfoxide
Diphenadione
Dipyrrone
Dyclonine
Ergonovine
Ethoxzolamide
Ethylaminobenzoate
Fexofenadine
Firocoxib
Fludrocortisone
Flumethasone
Flunisolide
Flunixin
Fluocinolone
Fluocinonide
Fluorometholone
Fluprednisolone

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Flurandrenolide
Fluticasone
Furosemide
Glycopyrrrolate
Guaifenesin
Halcinonide
Halobetasol
Hydrocortisone
Ibuprofen
Isoflupredone
Ketoprofen
Letosteine
Loratidine
Meclofenamic acid
Medrysone
Mesalamine
Methazolamide
Methocarbamol
Methylgonovine
Methylprednisolone
Metoclopramide
Mometasone
Montelukast
N-butylscopolamine
Nabumetone
Naproxen
Olsalazine
Oxyphenbutazone
Paramethasone
Phenylbutazone
Pirenzapine
Pramoxine
Prednisolone
Prednisone
Probenecid
Proparacaine
Salicylamide
Salicylate
Sulfasalazine
Sulindac
Tranexamic acid
Triamcinolone acetonide
Trichlormethiazide
Zafirlukast
Zeranol
Zileuton

(5)(a) Class D drugs, medications, and substances are those that:

1. Have a lesser potential to influence performance in the equine athlete than Class A and B drugs, medications, and substances or those Class C drugs, medications, and substances that are classified at that level because they have a lesser potential to influence performance and are not approved by the United States Food and Drug Administration; or

2. Have a lesser potential to influence performance in the equine athlete than any Class A, B, or C drugs, medications or substances.

(b) Class D shall include:

Anisindione
Cimetidine
Cromolyn
Dicumarol
Esomeprazole
Famotidine
Isoxsuprine
Lansoprazole
Misoprostol
Nedocromil
Nizatidine
Omeprazole
Pantoprazole
Pentoxyfylline
Phenindione

Phenprocoumon
Polyethylene glycol
Rabeprazole
Ranitidine
Warfarin

[Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule", KHRC 8-020-1, 11/2018; and

(b) "Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian", KHRC 8-020-2, 04/2020.

(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, 8:00 a.m. to 4:30 p.m., or on the commission's Web site at <http://khrc.ky.gov>]

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: March 4, 2021

FILED WITH LRC: March 5, 2021 at 3:13 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on May 24, 2021 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511 via Zoom. 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 11:59 p.m. on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets a medication classification schedule.

(b) The necessity of this administrative regulation: This regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications before and during race meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the drug classification schedule in effect in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on and before racing dates, and in a manner that is consistent with the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the regulation in two (2) ways. First, the medication classification schedule is removed from incorporated materials and placed directly into the body of the regulation. Second, the withdrawal guidelines and threshold levels are removed from incorporated materials and placed directly into the body of 810 KAR 8:025.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate incorporated materials into the body of the regulation. Regulated entities will be able to read all guidelines at the LRC's website or Westlaw, rather than searching for incorporated materials that are available on the KHRC's website.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses participating in a race. The amendment to this regulation is necessary to ensure that racing participants have easier access to the commission's regulatory requirements and guidance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 230.215(2), 230.260(8), KRS 230.240(2) by ensuring that racing participants have easier access to regulations establishing appropriate requirements and prohibitions pertaining to the use of medications in horse racing in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred and standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In 2017, the commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

(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: Participants in horse racing, and especially owners, trainers, and veterinarians, will be required to adhere to the requirements and rules set forth in these medication classifications, which pertain to the use of medications in horse racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No new costs are anticipated to comply with this administrative regulation, as Kentucky's licensees have operated in accordance with similar requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

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

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

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 Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.300.

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for the subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: NA

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 8:030. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.260, 230.265, 230.290, 230.300, 230.310, 230.320, 230.361

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(8), 230.265, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations under which racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the stewards, judges, and the commission.

Section 1. Definitions.

(1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose

relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to KAR Title 810 or KRS Chapter 230.

(8) "NSAID" means a nonsteroidal anti-inflammatory drug.

(9) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 8:020.

(10) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines established in 810 KAR 8:025~~[810 KAR 8:020]~~.

Section 2. General Provisions.

(1) An alleged violation of the provisions of KRS Chapter 230 or KAR Title 810 shall be adjudicated in accordance with this administrative regulation, 810 KAR 9:010, and KRS Chapters 230 and 13B.

(2) If a drug, medication, or substance that is not classified in the schedule is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Testing Consortium or their respective successors.

(3) The stewards, judges, and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. Evidence of full compliance with the withdrawal guidelines shall be considered by the stewards, judges, and the commission as a mitigating factor to be used in determining violations and penalties.

(4) A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(5) A suspension or revocation shall be calculated in calendar days, unless otherwise specified by the stewards, judges, or the commission in a ruling or order.

(6) Notice of the assessment of a penalty, including a written warning, shall be made to the person penalized. The notice and terms of the penalty shall be posted immediately on the official Web site of the commission and sent to the United States Trotting Association, the Association of Racing Commissioners International, or their successors, as applicable, to be posted on their respective official Web sites. If an appeal is pending, that fact shall be so noted.

(7) A horse administered a substance in violation of 810 KAR 8:010 may be required to pass a commission-approved examination as determined by the stewards or judges pursuant to 810 KAR 4:010, Section 10 or 810 KAR 5:010, Section 4, or be placed on the veterinarian's list pursuant to 810 KAR 8:010, Section 19~~[48]~~.

(8) To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a Class A violation

or for a Class B third offense violation has not been finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards or judges require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(9) In addition to the penalties contained in Section 4 of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 810 KAR 8:010 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(10) A veterinarian who administers, is a party to, facilitates, or is found to be responsible for any violation of KRS Chapter 230 or KAR Title 810 shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards or judges.

(11) In accordance with KRS 230.320(6), an administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(12) If a person is charged with committing multiple or successive overages involving a Class C or Class D drug, medication, or substance, the stewards, judges, or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards, judges, or the commission.

(13) If a penalty for a medication violation requires a horse to be placed on the stewards' list or the judges' list for a period of time, the stewards or judges may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive result.

(14) In standardbred racing only, if the penalty is for a driving violation and does not exceed in time a period of five (5) days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five (5) days or less, but the suspension shall be extended one (1) day for each date the driver drives in a race.

(15) A horse shall not be permitted to race while owned or controlled wholly or in part by a person whose license has been suspended or revoked.

(16) An association under the jurisdiction of the commission shall not willfully allow:

(a) A person whose license has been suspended or revoked in any jurisdiction to participate in racing;

(b) A horse suspended in any jurisdiction to start in a race or a performance against time; or

(c) The use of its track or grounds by a licensee whose license has been suspended or revoked and has been denied access to the grounds by the stewards or judges in any jurisdiction.

(17) If a person is ejected or excluded from a location under the jurisdiction of the commission, the stewards, judges, and commission director of security shall be notified in writing.

(18) A licensee that has been suspended shall serve any suspension imposed:

(a) During the current race meet, if there are enough remaining days to serve out the suspension;

(b) During the next regularly scheduled race meet at the operating race track where the infraction took place if there are not enough remaining days to serve out the suspension; or

(c) At the discretion of the stewards or judges, during a race meet at another operating track in any jurisdiction where the licensee seeks to engage in the activity for which he or she is licensed if the track where the infraction took place closes before another race meet is held at that track.

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(19) A penalty imposed by the governing body of any racing jurisdiction or the USTA States Trotting Association shall be recognized and reciprocally enforced by the commission unless application is made for a hearing before the stewards or judges, during which the applicant shall show cause as to why the penalty should not be enforced against him in Kentucky. The hearing shall be limited to the following issues:

- (a) Whether the applicant is the same person who is subject to the penalty imposed;
- (b) Whether the USTA or other racing jurisdiction in fact suspended the applicant; and
- (c) Determination of the time period of the suspension as imposed by the USTA or other racing jurisdiction.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the stewards, judges, and the commission in assessing penalties. The stewards or judges shall attach to a penalty judgment a copy of the offender's prior record listing violations that were committed both inside and outside of Kentucky.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations.

(1) Class A drugs. The penalties established in paragraphs (a) and (b) of this subsection shall apply to a Class A drug violation.

(a) Trainer

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
One (1) to three (3) year suspension, absent mitigating circumstances;	Three (3) to five (5) year suspension, absent mitigating circumstances;	Five (5) year suspension to a lifetime ban, absent mitigating circumstances;
AND	AND	AND
\$10,000 to \$25,000 fine, absent mitigating circumstances.	\$25,000 to \$50,000 fine, absent mitigating circumstances.	\$50,000 to \$100,000 fine, absent mitigating circumstances.

(b) Owner

First offense	Second lifetime offense in any racing jurisdiction in a horse owned by the same owner	Third lifetime offense in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse;	Disqualification and loss of purse;	Disqualification and loss of purse;
AND	AND	AND
Horse shall be placed on the stewards' list or judges' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Horse shall be placed on the stewards' list or judges' list for 120 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Ninety (90) day suspension, absent mitigating circumstances;
		AND
		\$50,000 fine, absent mitigating circumstances;
		AND
		Horse shall be placed on the stewards' list or judges' list for 180 days and may be required to pass a

		commission-approved examination before being eligible to enter as determined by the stewards or judges.
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(2)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

- 1. Class B drugs;
- 2. Gamma amino butyric acid in a concentration greater than 110 nanograms per milliliter; and
- 3. Cobalt in a concentration greater than fifty (50) parts per billion.

(b) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Thirty (30) to sixty (60) day suspension, absent mitigating circumstances;	Sixty (60) to 180 day suspension, absent mitigating circumstances;	180 to 365 day suspension, absent mitigating circumstances;
AND	AND	AND
\$500 to \$1,000 fine, absent mitigating circumstances.	\$1,000 to \$2,500 fine, absent mitigating circumstances.	\$2,500 to \$5,000 fine, absent mitigating circumstances.

(c) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner	Third offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse;	Disqualification and loss of purse;	Disqualification and loss of purse;
	AND	AND
Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges;	Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Horse shall be placed on the stewards' list or judges' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.
AND		
For a cobalt violation, the horse shall be placed on the stewards' list or judges' list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.		

(3)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:

- 1. Phenylbutazone in a concentration greater than three-tenths

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(0.3) micrograms per milliliter;

2. Flunixin in a concentration greater than five (5) nanograms per milliliter; and

3. Ketoprofen in a concentration greater than two (2) nanograms per milliliter.

(b) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Zero to ten (10) day suspension absent mitigating circumstances;	Ten (10) to thirty (30) day suspension absent mitigating circumstances;	Thirty (30) to sixty (60) day suspension absent mitigating circumstances;
AND	AND	AND
\$500 to \$1,500 fine absent mitigating circumstances.	\$1,500 to \$2,500 fine absent mitigating circumstances.	\$2,500 to \$5,000 fine absent mitigating circumstances.

(c) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Disqualification and loss of purse;	Disqualification and loss of purse;	Disqualification and loss of purse;
AND	AND	AND
Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	If same horse as first offense, horse shall be placed on the stewards' list or judges' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	If same horse as first and second offenses, horse shall be placed on the stewards' list or judges' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.

(4)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Overage of furosemide in a concentration greater than one (1) nanogram per milliliter [for horses that are not permitted by 810 KAR 8:001 to receive furosemide within twenty-four (24) hours of the post time of a race in which the horse is entered];

2. Overage of furosemide in a concentration greater than 100 nanograms per milliliter for horses other than those identified in subparagraph 1. of this paragraph;

3. Furosemide not identified when notice made that the horse would run on furosemide; and

4. Cobalt in a concentration greater than twenty-five (25) parts per billion through fifty (50) parts per billion.

(b) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Written warning	Written warning to a	\$500 to \$1,000 fine,

to a \$500 fine, absent mitigating circumstances.	\$750 fine, absent mitigating circumstances.	absent mitigating circumstances.
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(c) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges;	Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	If same horse as first and second offenses, disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.
AND		
For a cobalt violation, the horse shall be placed on the stewards' list or judges' list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.		

(d) If a furosemide violation occurs due solely to the actions or inactions of the commission veterinarian, then the trainer and owner shall not be penalized.

(5) Multiple NSAIDs. The penalties established in paragraphs (a) and (b) of this subsection shall apply to an overage of two (2) permitted NSAIDs: phenylbutazone, flunixin, and ketoprofen.

(a) Trainer

	Concentrations of both permitted NSAIDs above the NSAID threshold.
First offense	Zero to sixty (60) day suspension, absent mitigating circumstances;
	AND
	\$500 to \$1,000 fine, absent mitigating circumstances.
Second offense within a 365-day period in any racing jurisdiction	Sixty (60) to 180 day suspension, absent mitigating circumstances;
	AND
	\$1,000 to \$2,500 fine, absent mitigating circumstances.
Third offense within a 365-day period in any racing jurisdiction	180 to 365 day suspension, absent mitigating circumstances;
	AND
	\$2,500 to \$5,000 fine, absent mitigating circumstances.

(b) Owner

	Concentrations of both permitted NSAIDs above the NSAID threshold.
First offense	Disqualification and loss of purse.
Second offense within	Disqualification and loss of purse.

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a 365-day period in any racing jurisdiction	
Third offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.

(6) Class D drugs.

(a) The penalties established in paragraph (b) of this subsection shall apply to a Class D drug violation.

(b) Trainer

One (1) to four (4) offenses within a 365-day period in any racing jurisdiction	Five (5) or more offenses within a 365-day period in any racing jurisdiction
Zero to five (5) day suspension, absent mitigating circumstances;	Five (5) to ten (10) day suspension, absent mitigating circumstances;
AND	AND
\$250 to \$500 fine, absent mitigating circumstances.	\$500 to \$1,000 fine, absent mitigating circumstances.

Section 5. TCO2 Penalties. The penalties established in subsections (1) and (2) of this section shall apply to a violation of 810 KAR 8:010, Section ~~21(6), (7), or (8)~~ [20(6), (7), or (8)].

(1) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Zero to ninety (90) day suspension, absent mitigating circumstances;	Ninety (90) to 180 day suspension, absent mitigating circumstances;	180 to 365 day suspension, absent mitigating circumstances;	One (1) year suspension to lifetime ban, absent mitigating circumstances.
AND	AND	AND	
\$1,000 to \$1,500 fine, absent mitigating circumstances.	\$1,500 to \$3,000 fine, absent mitigating circumstances.	\$3,000 to \$5,000 fine, absent mitigating circumstances.	

(2) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse;	Disqualification and loss of purse;	Disqualification and loss of purse;
	AND	AND	AND
	If same horse as first offense, horse shall be placed on the stewards' list	If same horse as first and second offenses, horse shall be placed on the	If same horse as first, second, and third offenses, horse shall be

	from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	stewards' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	placed on the stewards' list from 180 to 365 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.
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Section 6. Shock Wave Machine and Blood Gas Machine Penalties. The penalties established in subsections (1) and (2) of this section shall apply to a violation of 810 KAR 8:010, Section ~~21(5), (9), or (10)~~ [Section 20(5), (9), or (10)].

(1) Trainer

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Thirty (30) to sixty (60) day suspension absent mitigating circumstances;	Sixty (60) to 180 day suspension absent mitigating circumstances;	180 to 365 day suspension absent mitigating circumstances;
AND	AND	AND
\$1,000 to \$5,000 fine absent mitigating circumstances.	\$5,000 to \$10,000 fine absent mitigating circumstances.	\$10,000 to \$20,000 fine absent mitigating circumstances.

(2) Owner

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse;	Disqualification and loss of purse;
	AND	AND
	If same horse as first offense, horse shall be placed on the stewards' list or judges' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	If same horse as first and second offenses, horse shall be placed on the stewards' list or judges' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.

Section 7. Persons with a Suspended or Revoked License.

(1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location

under the jurisdiction of the commission;

(b) Complete an entry form for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinary work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(4) A person who is responsible for the care, training, or veterinary services provided to a horse formerly under the care, training, or veterinary services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 8. Other Disciplinary Measures.

(1) A person who violates 810 KAR 8:010, Section ~~21(2)[20(2)]~~, shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council.

(2) A person who violates 810 KAR 8:010, Section ~~21(3)[20(3)]~~, shall be treated the same as a person who has committed a Class A drug violation.

Section 9. Disciplinary Measures by Stewards or Judges. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 or KAR Title 810, if not otherwise provided for in this administrative regulation, the stewards or judges may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or a licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation and the facts of the case;

(3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards or judges to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be denied access to association grounds or a portion of association grounds; and

(4) Payment of a fine in an amount not to exceed \$50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

Section 10. Disciplinary Measures by the Commission.

(1) Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 or KAR Title 810, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of a horse or race participant or may affect the outcome of a race, declare a horse or a licensed person ineligible to race or disqualify a horse or licensed person in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation;

(c) Cause a person found to have interfered with or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the commission to be inconsistent with maintaining the honesty and integrity of horse racing, to be denied access to association grounds or a portion of association grounds for a length of time the commission deems necessary;

(d) Payment of a fine of up to \$50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

(2) Upon appeal of a matter determined by the stewards' or judges the commission may:

(a) Order a hearing de novo of a matter determined by the stewards' or judges; and

(b) Reverse or revise the stewards' or judges' ruling in whole or in part, except as to findings of fact by the stewards' or judges' ruling regarding matters that occurred during or incident to the running of a race and as to the extent of disqualification fixed by the stewards or judges for a foul in a race.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: March 4, 2021

FILED WITH LRC: March 5, 2021 at 12:43 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on May 24, 2021 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five weekdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the penalties for violations of the requirements and prohibitions concerning the use of medication at race meetings at licensed racing associations in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications during race meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations

prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to horses participating in a race. This administrative regulation establishes the requirements, prohibitions, and procedures pertaining to the use of medications on racing days during horse race meetings in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on racing days and in a manner that is consistent with the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: This amendment originally referred only to 810 KAR 8:020 when it referred to medication classifications, withdrawal guidelines, and threshold levels. Now, the amendment also refers to the newly-created regulation 810 KAR 8:025, which will outline medication withdrawal guidelines and threshold levels. This regulation is also amended to refer to correct section numbers in 810 KAR 8:010.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the regulation properly refers to 810 KAR 8:025 regarding withdrawal guidelines and threshold levels.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to horses participating in a race. The amendment to this administrative regulation refers to a new regulation establishing requirements, prohibitions, and procedures pertaining to the use of medications on and leading up to racing days during horse race meetings in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 230.215(2), 230.260(8), and KRS 230.240(2) by establishing appropriate requirements and prohibitions pertaining to the use of medications in horse racing in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred and standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

(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: Participants in horse racing, and especially owners, trainers, and veterinarians, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the use of medication in horse racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No new costs are anticipated to comply with this administrative regulation, as Kentucky's licensees have operated in accordance with similar requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules

that enhance the integrity of racing.

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

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

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

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 Horse Racing Commission 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 230.215, 230.240, 230.260, 230.320.

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

810 KAR 8:040. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.225(5), 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(11).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes new sampling and testing procedures for prohibited substances, and establishes penalties for individuals found to be in violation of this administrative regulation.

Section 1. Definitions.

(1) "Endogenous" means a substance that is naturally produced by the healthy body.

(2) "Exogenous" means a substance that is not naturally produced by the healthy body.

(3) "Out of competition testing" means all testing other than:

(a) Pre-race TCO2 testing; and

(b) Post-race testing at a licensed association under the jurisdiction of the commission.

(4) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(5) "Sampling" means the act of collecting a specimen from a horse.

(6) "Specimen" means blood, urine, or other biologic matter taken or drawn from a horse for testing.

Section 2. Prohibited Substances and Practices.

(1) All substances identified in this administrative regulation shall be prohibited unless specifically permitted. A positive finding by the commission laboratory of a substance prohibited by this administrative regulation in a specimen taken from a horse designated for testing by a commission veterinarian or his designee shall be prima facie evidence that a violation has occurred. Any reference to substances in this section does not alter the requirements for testing concentrations in race day samples established in 810 KAR 8:010 and 810 KAR 8:050.

(2) Any pharmacological substance not addressed by this administrative regulation and without current approval by the U.S. Food and Drug Administration for human or veterinary use shall be prohibited at all times without prior approval of the commission. If a veterinarian seeks approval to use a pharmacological substance not currently approved by the U.S. Food and Drug Administration, the commission or its designee may consult with the Association of Racing Commissioners International, the Racing and Medication Testing Consortium, or their successors to determine whether to authorize use of the substance.

(3) Therapeutic substances not otherwise prohibited by this administrative regulation may be used if the substances:

(a) Are currently approved for human or veterinary use by the U.S. Food and Drug Administration; and

(b) Are prescribed and administered in the context of a valid veterinarian-client-patient relationship.

(4) Compounded medications not otherwise prohibited by this administrative regulation may be used if the medications:

(a) Are permitted by federal law or the law of the state where the horse is located when the compounded medication is administered; and[-]

(b) Are prescribed and administered in the context of a valid veterinarian-client-patient relationship.

(5)(a) Except as provided in paragraph (b) of this subsection, the following Anabolic Androgenic Steroids (AAS) shall be prohibited:

1. Exogenous AAS, such as [including]: 1-androstenediol (5 α -androst-1-ene-3 β ,17 β -diol); 1-androstenedione (5 α -androst-1-ene-3,17-dione); bolandiol (estr-4-ene-3 β ,17 β -diol); bolasterone; boldenone; boldione (androsta-1,4-diene-3,17-dione); calusterone; clostebol danazol (oxazolopregna-4-en-20-yn-17 α -ol); dehydrochloromethyltestosterone (4-chloro-17 β -hydroxy-17 α -methylandrosta-1,4-dien-3-one); desoxymethyltestosterone (17 α -ethyl-5 α -androst-2-en-17 β -ol); drostanolone; ethylestrenol (19-norpregna-4-en-17 α -ol); fluoxymesterone; formebolone; furazabol (17 α -methyloxadiazolo-5 α -androstan-17 β -ol); gestrinone; 4-hydroxytestosterone (4,17 β -dihydroxyandrost-4-en-3-one); mestanolone; mesterolone; metandienone (17 β -hydroxy-17 α -methylandrosta-1,4-dien-3-one); metenolone; methandriol; methasterone (17 β -hydroxy-2 α ,17 α -dimethyl-5 α -androstan-3-one); methyldienolone (17 β -hydroxy-17 α -methyl-4,9-dien-3-one); methyl-1-testosterone (17 β -hydroxy-17 α -methyl-5 α -androst-1-en-3-one); methylnortestosterone (17 β -hydroxy-17 α -methyl-4-en-3-one); methyltestosterone; metribolone (methyltrienolone, 17 β -hydroxy-17 α -methyl-4,9,11-trien-3-one); mibolerone; nandrolone; 19-norandrostenedione (estr-4-ene-3,17-dione); norboletone; norclostebol; norethandrolone; oxabolone; oxandrolone; oxymesterone; oxymetholone; prostanazol (17 β -1^Hpyrazolo-5 α -androstane); quinbolone; stanozolol; stenbolone; 1-testosterone (17 β -hydroxy-5 α -androst-1-en-3-one); tetrahydrogestrinone (17-hydroxy-18 α -homo-19-nor-17 α pregna-4,9,11-trien-3-one); and trenbolone (17 β -hydroxyestr-4,9,11-trien-3-one); and

2. Endogenous AAS or their synthetic esters if administered exogenously: androstenediol (androst-5-ene-3 β ,17 β -diol); androstenedione (androst-4-ene-3,17-dione); dihydrotestosterone (17 β -hydroxy-5 α -androstan-3-one); prasterone (dehydroepiandrosterone, DHEA, 3 β -hydroxyandrost-5-en-17-one); testosterone; and their metabolites and isomers, including but not limited to: 5 α -androstane-3 α ,17 α -diol; 5 α -androstane-3 α ,17 β -diol; 5 α -androstane-3 β ,17 α -diol; 5 α -androstane-3 β ,17 β -diol; 5 β -androstane-3 α , 17 β -diol, androst-4-ene-3 α ,17 α -diol; androst-4-ene-3 α ,17 β -diol; androst-4-ene-3 β ,17 α -diol; androst-5-ene-3 α ,17 α -diol; androst-5-ene-3 α ,17 β -diol; androst-5-ene-3 β ,17 α -diol; 4-androstenediol (androst-4-ene-3 β ,17 β -diol); 5-androstenedione (androst-5-ene-3,17-dione); androsterone (3 β -hydroxy-5 α -androstan-17-one); epi-dihydrotestosterone; epitestosterone; etiocholanolone; 7 α -hydroxy-DHEA; 7 β -hydroxy- DHEA; 7-keto-DHEA; 19-norandrosterone; 19-noretiocholanolone.

(b) Anabolic steroids may be used out of competition if:

1. The anabolic steroid is currently approved for human or veterinary use by the U.S. Food and Drug Administration;

2. The administration is:

a. Performed pursuant to a valid veterinary prescription;

b. Entered into the horse's medical record by the administering veterinarian; and

c. Reported by the administering veterinarian to the commission no later than twenty-four (24) hours after administration or dispensing of the medication;

3. The record is made available upon request for inspection by the commission or its designee; and

4. The horse is placed on the Veterinarian's List for six (6) months after the last administration of an anabolic steroid or agent.

(6)(a) Except as provided in paragraph (b) of this subsection, the following anabolic agents shall be prohibited:

1. Clenbuterol;

2. Selective androgen receptor modulators (SARMs);

3. Ractopamine;

4. Tibolone;

5. Zeranol; and

6. Zilpaterol.

(b) Clenbuterol may be administered if the treatment is:

1. Pursuant to a valid veterinary prescription; [and]

2. Reported by the administering veterinarian to the commission no later than 24 hours after administration or dispensing of the medication; and[-]

3. Otherwise compliant with 810 KAR 8:010, Section 10.

(7) The following substances shall be prohibited:

(a) Erythropoiesis-Stimulating Agents (ESAs), such as

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[including] darbepoetin (dEPO); erythropoietins (EPO); EPO-Fc; EPOmimetic peptides (EMP), e.g., CNTO 530 and peginesatide; and methoxypolyethylene glycol-epoetin beta (CERA);

(b) Non-erythropoietic EPO-Receptor agonists, such as [including] ARA-290, asialo EPO and carbamylated EPO; and

(c) Hypoxia-inducible factor (HIF) stabilizers, such as [including] cobalt (if detected at concentrations in excess of the threshold prescribed in 810 KAR 8:010, Section 2(4)(b)), and roxadustat (FG-4592); and HIF activators, (e.g., argon, xenon).

(8)(a) Except as provided in paragraph (b) of this subsection, Chorionic Gonadotropin (CG) and Luteinizing Hormone (LH) and their releasing factors, shall be prohibited in male horses.

(b) Chorionic Gonadotropin (CG) and Luteinizing Hormone (LH) may be used in male horses if:

1. The treatment is pursuant to a valid veterinary prescription; and

2. The administering veterinarian files a treatment plan with the commission prior to administering the medication.

(9)(a) Except as provided in paragraph (b) of this subsection, Corticotrophin releasing factors and corticotrophin releasing hormones (CCRH) shall be prohibited.

(b) Adrenocorticotrophic Hormone (ACTH) may be used if the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. Reported by the administering veterinarian to the commission no later than twenty-four (24) hours after administration or dispensing of the medication by the veterinarian.

(c) Growth Hormone (GH); Growth Hormone Releasing Hormone (GHRH); CJC-1295, sermorelin and tesamorelin; Growth Hormone Secretagogues (GHS); anamorelin; ipamorelin; GH-Releasing Peptides (GHRPs); alexamorelin; GHRP-6; hexarelin; and pralmorelin (GHRP-2) shall be prohibited.

(d) Venoms and toxins from sources, such as [including] snails, snakes, frogs, and bees and their synthetic analogues, such as [including] ziconotide, shall be prohibited.

(e) Growth factors, such as [including] Fibroblast Growth Factors (FGFs), Hepatocyte Growth Factor (HGF), Insulin-like Growth Factor-1 (IGF-1) and its analogues, Mechano Growth Factors (MGFs), Platelet-Derived Growth Factor (PDGF), Vascular-Endothelial Growth Factor (VEGF) and any other growth factor affecting muscle, tendon or ligament protein synthesis/degradation, vascularization, energy utilization, regenerative capacity or fiber type switching shall be prohibited.

(10) Platelet rich plasma (PRP) and autologous conditioned plasma (IRAP) may be used if the treatment is:

(a) Pursuant to a valid veterinary prescription; and

(b) Reported to the commission's representative at the time of sampling if administered within the preceding twenty-four (24) hours.

(11) All beta-2 agonists, such as [including] all optical isomers (i.e., d- and l-) where relevant, shall be prohibited.

(12) Clenbuterol and albuterol may be used if the treatment is:

(a) Pursuant to a valid veterinary prescription; and

(b) Reported by the administering veterinarian to the commission no later than twenty-four (24) hours after administration or dispensing of the medication by the veterinarian; and

(c) Otherwise compliant with 810 KAR 8:010, Section 10.

(13)(a) Except as established in paragraphs (b) and (c) of this subsection, hormone and metabolic modulators shall be prohibited such as [including]:

1. Aromatase inhibitors, such as [including] aminoglutethimide, anastrozole, androsta-1,4,6-triene-3,17-dione (androstatrienedione), 4-androstene-3,6,17-trione (6-oxo), exemestane, formestane, letrozole, testolactone;

2. Selective estrogen receptor modulators (SERMs), such as [including] raloxifene, tamoxifen, toremifene;

3. Other anti-estrogenic substances, such as [including] clomiphene, cyclofenil, fulvestrant;

4. Agents modifying myostatin function(s), such as [including] myostatin inhibitors;

5. Activators of the AMP-activated protein kinase (AMPK), such as [including] 5-Aminoimidazole-4-carboxamide

ribonucleotide (AICAR); and Peroxisome Proliferator Activated Receptor δ (PPAR δ) agonists such as [including] GW 1516;

6. Insulins;

7. Trimetazidine; and

8. Thyroxine, and thyroid modulators/hormones such as [including] T4 (tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof.

(b) Thyroxine (T4) may be used:

1. The treatment is pursuant to a valid veterinary prescription; and

2. A treatment report is filed in writing or electronically with the commission within twenty-four (24) hours of the administration or dispensing of the medication by the veterinarian.

(c) Altrenogest may be used in fillies and mares if the treatment is pursuant to a valid veterinary prescription. Altrenogest may be used is permitted in intact males if the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. The administering veterinarian files a treatment plan with the commission prior to administering the medication.

(18)(a) Except as provided in paragraphs (b) and (c) of this subsection, diuretics shall be prohibited, such as [including] acetazolamide, amiloride, bumetanide, canrenone, chlorthalidone, ethacrynic acid, indapamide, metolazone, spironolactone, thiazides, such as [including] bendroflumethiazide, chlorothiazide, hydrochlorothiazide, torsemide, triamterene, vasopressin receptor antagonists or vaptans, such as [including] tolvaptan.

(b) Furosemide and trichlormethiazide may be used out of competition if the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. Reported at the time of sampling if administered within the preceding twenty-four (24) hours.

(c) Other diuretics, including those established in paragraph (a) above, may be administered in an emergency if the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. Reported to the commission within twenty-four (24) hours of administration.

(19) Masking agents, such as [including] desmopressin, plasma expanders (such as [including] glycerol; intravenous administration of albumin, dextran, and hydroxyethyl starch), and probenecid, shall be prohibited.

(20) The administration or reintroduction of any quantity of autologous, allogenic (homologous) or heterologous blood or red blood cell products of any origin into the circulatory system shall be prohibited.

(21) Artificially enhancing the uptake, transport or delivery of oxygen, with perfluorochemicals, efaproxiral (RSR13), hemoglobin products, hemoglobin-based blood substitutes, and microencapsulated hemoglobin products (excluding supplemental oxygen) shall be prohibited.

(22)(a) Except as provided in paragraph (b) of this subsection, any form of intravascular manipulation of the blood or blood components by physical or chemical means shall be prohibited.

(b) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

(23) Polymers of nucleic acids or nucleic acid analogues shall not be transferred unless prior approval is requested and received from the commission or its designee.

(24) The use of normal or genetically modified hematopoietic cells shall be prohibited.

(25) Mesenchymal stem cells may be used for treatment of musculoskeletal disorders, if the treatment is:

1. Entered by the veterinarian in the horse's medical record, which record shall be made available to a designee of the commission upon request;

2. Pursuant to a valid veterinary prescription; and

3. Reported to the commission's representative at the time of sampling.

Section 3. Out-of-Competition Testing.

(1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse shall be presumed eligible to race in Kentucky if:

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(a) It is under the care, custody, or control of a trainer licensed by the commission;

(b) It is owned by an owner licensed by the commission;

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300;

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months;

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Thoroughbred Development Fund, the Kentucky Standardbred Development Fund, or the Kentucky quarter horse, paint horse, Appaloosa and Arabian Development Fund.

(2) A horse subject to testing under subsection (1) of this section may be designated for testing by the executive director, the chief state steward, chief judge, or their respective designee.

(3) An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at a place designated by the commission veterinarian, or his or her designee; and

(c) Observing the collection of the specimen.

1. If the owner, trainer or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee[,] becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is issued by the commission veterinarian or his or her designee.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list, pursuant to 810 KAR 8:010, Section 18 [47], and the steward's list or judges' list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

(4) Responsible persons.

(a) The trainer of the horse shall be responsible for the condition of a horse sampled for an out-of-competition test while on the grounds of a licensed training facility or racetrack.

(b) If the horse is sampled while not on the grounds of a licensed training facility or racetrack, the owner shall be presumed to be the responsible person unless the owner can establish, by substantial evidence, that another licensed person had accepted the responsibility for the care, custody, and control of the horse, making that person the responsible person.

(c) If a horse sampled for an out-of-competition test was claimed, sold, or otherwise transferred during the time the substance giving rise to the positive test may have been administered, then the commission shall investigate to determine, by a preponderance of the evidence, the identity of the responsible person at the time the substance may have been administered.

(d) If the commission cannot determine a responsible person, then the commission may deem the owner responsible and may place the horse on the veterinarian's list for as long as is necessary to protect the integrity of racing.

(e) If a horse designated for testing is sampled at a location not under the jurisdiction of the commission, the trainer or his designee may declare at the time of sampling any reportable substances that have been administered to the horse but have not previously been disclosed to the commission.

Section 4. Specimen Collection.

(1) A specimen shall be collected from any horse designated by the executive director, the chief state steward, the presiding judge, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) If a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a

veterinarian from that jurisdiction's racing commission or regulatory entity to collect the specimen.

(3) At a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) At a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify orally or in writing the owner, trainer, or their designee before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 5. Minimum and split samples. The commission veterinarian, in consultation with the official laboratory, shall determine minimum and split sample requirements as established at 810 KAR 8:010, Section 12 [44].

Section 6. Sample Storage and Testing.

(1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with 810 KAR 8:010, Section 12 [44].

(2) The commission is the owner of an out of competition specimen. (3) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(4) Split samples shall be subject to 810 KAR 8:010, Section 12 [44], and the chain of custody of any split sample shall be maintained in accordance with 810 KAR 8:010, Section 13 [42].

(5) The cost of testing a split sample, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Notice of Violation and Hearing. Within five (5) business days of receipt by the stewards or judges of notification of a violation of this administrative regulation, the stewards or judges shall notify the owner and trainer orally or in writing of the violation and shall schedule a stewards' or judges' hearing within fourteen (14) calendar days of notification by the stewards or judges to the owner and trainer. The hearing may be continued if the stewards or judges determine a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner, responsible person, or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) A positive finding of a substance prohibited by this administrative regulation shall be subject to the penalties for that substance established in 810 KAR 8:010, 810 KAR 8:020, 810 KAR 8:025, and 810 KAR 8:030.

(2) If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list, pursuant to 810 KAR 8:010, Section 19 [47], and the steward's list or judges' list, for 180 days, and the individual or individuals responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties established in subsection (4) of this section.

(3) A horse that is barred from racing in Kentucky and placed on the Veterinarian's List and the steward's list, or judges' list pursuant to subsection (4)(c) or subsection (5) of this section shall remain barred from racing and shall remain on the veterinarian's

list and the steward's list or judge's list:

(a) Upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance prohibited by this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward or presiding judge.

(4)(a) Willful failure to make a horse available for sampling, tampering with or attempting to tamper in order to alter the integrity and validity of a sample, including urine substitution or adulteration, or any other deceptive acts or interference in the sampling process, shall be penalized as follows:

1. For a first offense, a Class A penalty as established in 810 KAR 8:030; or

2. For a second offense, permanent license revocation.

(b) A horse that is not produced for out of competition testing shall be placed on the Veterinarian's List for a minimum of 180 days.

(5) Failure to report treatment as required by this administrative regulation shall be penalized as follows:

(a) For a first offense, a warning; or

(b) For a second or subsequent offense, a Class D penalty as established in 810 KAR 8:030.

(6) Upon finding a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the veterinarian's list pursuant to 810 KAR 8:010, Section 18 [47], and the stewards' or judges' list, for a period of up to 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward or presiding judge.

(7) Upon finding a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall remain subject to the requirements of subsection (4) of this section:

(a) Upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward or presiding judge.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: March 4, 2021

FILED WITH LRC: March 5, 2021 at 12:43 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on May 24, 2021 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for out-of-competition testing in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications when race horses are not in competition.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to horses participating in a race. This administrative regulation establishes the requirements, prohibitions, and procedures pertaining to the use of medications when race horses are not in competition.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately and in a manner that is consistent with the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will revise this regulation to state that clenbuterol may be administered if the treatment is compliant with 810 KAR 8:010.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications during race meetings.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to horses participating in a race. This administrative regulation establishes the requirements, prohibitions, and procedures pertaining to the use of medications when race horses are out of competition.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately and in a manner that is consistent with the integrity of racing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred and standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

(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: Participants in horse racing, and especially owners, trainers, and veterinarians, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the use of medications in horse racing. Trainers, owners, and veterinarians will have to alter their medication administration practices to comply with the amendments to this regulation.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities: No new costs are anticipated to comply with this administrative regulation, as the cost of the tests to exit the veterinarian's list are free to the owners and trainers.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

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

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

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 Horse Racing Commission 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 230.215, 230.240, 230.260.

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No new or additional funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No new or additional funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: NA

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*.

BOARDS AND COMMISSIONS
Board of Pharmacy
(New Administrative Regulation)

201 KAR 2:171. Computerized recordkeeping.

RELATES TO: KRS 217.215, 217.216, 315.191
STATUTORY AUTHORITY: KRS 217.215(2), 315.191(1), (a),

(f) **NECESSITY, FUNCTION, AND CONFORMITY:** KRS 217.215(2) provides for the board to establish administrative regulations relating to the storage and retrieval of prescriptions records, including computerized recordkeeping. This administrative regulation provides standards for those using computerized recordkeeping.

Section 1. The following information shall be entered into the system:

(1) All information pertinent to a prescription shall be entered into the system, including, but not limited to, each of the following:

- (a) The prescription number;
- (b) The patient's name and address;
- (c) The prescriber's name and address;
- (d) The prescriber's Federal Drug Enforcement Administration number, if appropriate;

(e) Refill authorization;

(f) Any prescriber's instructions or patient's preference permitted by law or administrative regulation;

(g) The name, strength, dosage form, and quantity of the drug dispensed originally and upon each refill; and

(h) The date of dispensing of the prescription and the identifying designation of the dispensing pharmacist for the original filling and each refill.

(2) The entries shall be made into the system at the time the prescription is first filled and at the time of each refill, except that the format of the record may be organized so that the data already entered may appear for the prescription or refill without reentering that data. Records that are received or sent electronically may be kept electronically. The dispensing pharmacist shall be responsible for the completeness and accuracy of the entries.

(3) The original prescription and a record of each refill, if received written or oral, shall be preserved as a hard copy for a period of three (3) years and thereafter be preserved as a hard copy or electronically for no less than an additional two (2) years. The original prescription and a record of each refill, if received by facsimile, shall be preserved as a hard copy, the original electronic image, or electronically for a period of three (3) years and thereafter be preserved as a hard copy, the original electronic image, or electronically for no less than an additional two years. The original and electronic prescription shall be subject to inspection by authorized agents. An original prescription shall not be obstructed in any manner.

(4) The original prescription and a record of each refill, if received as an e-prescription, shall be preserved electronically for a period of no less than five (5) years. The electronic prescription shall be subject to inspection by authorized agents. An original prescription shall not be obstructed in any manner.

(5) The required information shall be entered into the system for all prescriptions filled at the pharmacy.

(6) The system shall provide adequate safeguards against improper manipulation or alteration of the data.

(7) The system shall have the capability of producing a hard-copy printout of all original and refilled prescription data as required in Section 1 of this administrative regulation. A hard-copy printout of the required data shall be made available to an authorized agent within forty-eight hours of the receipt of a written request.

(8) The system shall maintain a record of each day's

prescription data as follows:

(a) This record shall be verified, dated, and signed by the pharmacist(s) who filled those prescription orders either:

- 1. Electronically;
- 2. Manually; or
- 3. In a log.

(b) This record shall be maintained for no less than five (5) years; and

(c) This record shall be readily retrievable and shall be subject to inspection by authorized agents.

(9) An auxiliary recordkeeping system shall be established for the documentation of refills if the automated data processing system is inoperative for any reason. The auxiliary system shall insure that all refills are authorized by the original prescription order and that the maximum number of refills is not exceeded. If the automated data processing system is restored to operation, the information regarding prescriptions filled and refilled during the inoperative period shall be entered into the automated data processing system within seventy-two (72) hours.

(10) Controlled substance data shall be identifiable apart from other items appearing in the record.

(11) The pharmacist shall be responsible to assure continuity in the maintenance of records throughout any transition in computerized record systems utilized.

Section 2. A computer malfunction or data processing services provider's negligence shall not be a defense against charges of improper recordkeeping.

Section 3. This administrative regulation is not applicable to the recordkeeping for drugs prescribed for and administered to patients confined as inpatients in an acute care facility.

LARRY A. HADLEY, R.PH., Executive Director

APPROVED BY AGENCY: March 11, 2021

FILED WITH LRC: March 11, 2021 at 9:51 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2021, 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 May 31, 2021. 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 standards for computerized recordkeeping.

(b) The necessity of this administrative regulation: KRS

315.191(1)(a) requires the board to promulgate administrative regulations necessary to regulate and control the practice of pharmacy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the standards in which pharmacies and those practicing pharmacy must adhere if they utilize computerized recordkeeping. KRS 315.191(1)(a) allows for the Board to promulgate administrative regulations necessary to regulate and control the practice of pharmacy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that there are uniform standards of computerized recordkeeping across the Commonwealth to ensure that patients and patient information are safe.

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

(a) How the amendment will change this existing administrative regulation: n/a

(b) The necessity of the amendment to this administrative regulation: n/a

(c) How the amendment conforms to the content of the authorizing statutes: n/a

(d) How the amendment will assist in the effective administration of the statutes: n/a

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies, pharmacists, pharmacist interns and pharmacist technicians that are utilizing computerized recordkeeping to 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: These are the same requirements that existed in 201 KAR 2:170 (expired). Pharmacists, technicians and interns will have to familiarize themselves with the language of the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacies, pharmacists, technicians and interns can ensure that they are utilizing safe practices in regards to computerized recordkeeping.

(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 pharmacies and pharmacists 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? 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 (+/-): 0

Expenditures (+/-): 0

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology

201 KAR 26:301. Repealer.
Repeal 201 KAR 26:300.

RELATES TO: KRS 319.032

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1) (a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements, standards, and tests to determine the moral, intellectual, educational, scientific, technical, and professional qualifications of applicants for licensure. Both 201 KAR 26:200 and 201 KAR 26:300 related to educational requirements. This administrative action repeals 201 KAR 26:300 because its contents have been included as an amendment to 201 KAR 26:200.

Section 1. 201 KAR 26:300 is hereby repealed.

JEAN A. DETERS, PSY.D., Board Chair

APPROVED BY AGENCY: March 1, 2021

FILED WITH LRC: March 4, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 28, 2021, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Alternately, the public hearing may be conducted by way of Zoom if the Mayo-Underwood Building is still closed due to the pandemic. A Zoom link will be posted on the Board website if necessary. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 2021, 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 May 31, 2021. 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 (502) 782-8823, fax (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 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation contents have been included as an amendment to 201 KAR 26:200.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation contents have been included as an amendment to 201 KAR 26:200.

(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 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

(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 contents have been included as an amendment to 201 KAR 26:200.

(b) The necessity of the amendment to this administrative regulation: The amendment contents have been included as an amendment to 201 KAR 26:200.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for the practice of psychology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist 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: None.

(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 psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of licensees requiring supervision.

(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 Examiners of Psychology 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? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(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? This administrative regulation is being repealed because its substance has been moved to another regulation. It thus does not generate revenue for the Board.

(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 for the Board.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not create a cost for the Board.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not create a cost for the Board.

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:

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Administrative Regulation)**

810 KAR 6:010. Exotic wagering.

RELATES TO: KRS 230.300, 230.361, 230.3615, 230.370, 230.398, 230.750

STATUTORY AUTHORITY: KRS 230.210, 230.215, 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky.

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KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel 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 KAR Title 810.

Section 1. All Pari-mutuel Wagers on a Historical Horse Race or Races 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 or races 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 of approval for 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 KAR Title 810.

(6) The commission shall notify the association if it determines that the criteria 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 or Races.

(1) Except as 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 or races, which shall include a detailed description of the rules that apply to the pari-mutuel 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 a Historical Horse Race or Races.

(1) An association shall submit a written request to the commission for permission to offer any exotic wager on a historical horse race or races, 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, the trust account, if applicable, and the player-

funded pool or pools, if applicable, as well as the method of calculating payouts;

(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 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 referenced in Section 6(2) of this administrative regulation between the association and one of the following horsemen's organizations, as applicable:

1. For thoroughbred associations operating historical horse racing, the Kentucky Horsemen's Benevolent and Protective Association, the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, or their successors;

2. For standardbred associations operating historical horse racing, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, or their successors;

3. For quarterhorse associations operating historical horse racing, the Kentucky Quarter Horse Racing Association or its successor;

4. For Arabian associations operating historical horse racing, the Arabian Jockey Club, or its successor; and

5. For appaloosa associations operating historical horse racing, a horsemen's organization representing appaloosa racing.

(2)(a) Except as set forth in paragraph (b) of this subsection, each association that is approved by the commission to offer exotic wagering on historical horse racing shall request, in any application submitted for a license, to conduct live horse racing pursuant to KRS 230.300 and 810 KAR 3:010:

1. No less than 100 percent of the number of racing days initially requested by the association in its application to conduct 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 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 racing for 2010, or the number of races initially applied for by the association in its application to conduct racing for 2010, if written approval is obtained from the commission, and from one of the following horsemen's organizations, as applicable:

1. for thoroughbred associations operating historical horse racing, the Kentucky Horsemen's Benevolent and Protective Association, the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, or their successors;

2. for standardbred associations operating historical horse racing, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, or their successors;

3. for quarterhorse associations operating historical horse racing, the Kentucky Quarter Horse Racing Association or its successor;

4. for Arabian associations operating historical horse racing, the Arabian Jockey Club, or its successor; and

5. for appaloosa associations operating historical horse racing, a horsemen's organization representing appaloosa racing.

Section 5. Terminals Used for Wagering on a Historical Horse Race or Races.

(1) Wagering on historical horse races shall be conducted only on terminals approved by the commission as 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 historical horse races 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 set forth in KRS 230.3615 or KRS 230.750, as applicable.

(2)(a) Each association shall enter into an agreement with one of the following horsemen's organizations, as applicable, to establish the allocation of the takeout on all exotic wagers on historical horse races offered by the association:

1. For thoroughbred associations operating historical horse racing, the Kentucky Horsemen's Benevolent and Protective Association, the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, or their successors;

2. For standardbred associations operating historical horse racing, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, or their successors;

3. For quarterhorse associations operating historical horse racing, the Kentucky Quarter Horse Racing Association or its successor;

4. For Arabian associations operating historical horse racing, the Arabian Jockey Club, or its successor; and

5. For appaloosa associations operating historical horse racing, a horsemen's organization representing appaloosa racing. 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.

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.

JONATHAN RABINOWITZ, Chair

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: February 15, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on May 24, 2021 at Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies the process for licensed racing associations to request permission from the Kentucky Horse Racing Commission to offer exotic forms of pari-mutuel wagers on live and historical horse races. It includes a process for associations to request permission to offer pari-mutuel wagering on live and historical horse races and establishes criteria for the commission to evaluate such requests.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which 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 wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the procedures and regulations governing exotic forms of pari-mutuel wagering under KRS Chapter 230 and the commission's administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This administrative regulation establishes the criteria for determining whether exotic wagers requested by licensed racing association comply with the provisions of KRS Chapter 230 and the commission's administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment. This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment. This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment. This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new regulation will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place exotic wagers on live and historical horse racing in the Commonwealth, and the commission.

(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: The new regulation primarily updates language to comply with Family Trust Foundation v. Kentucky Horse Racing Commission, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120, and migrates Title 811 regulations to Title 810. This emergency amendment will not require regulated entities to take any additional compliance actions that they are not already taking. Additionally, the new regulation will require regulated entities to provide detailed information regarding either the player-funded pool(s) or the trust account (if any) being utilized by each respective association in order to

ensure that sufficient funds are at all times available to pay any winning wagers in situations where a pari-mutuel pool becomes a minus pool.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This new regulation is not anticipated to significantly increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The associations will have a defined process to follow if they plan to offer exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This new regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses.

(b) On a continuing basis: This new regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This new regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(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 proposed amendment is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This new regulation is not anticipated to significantly increase compliance costs for any regulated entity and will not increase compliance costs for the commission. However, as in previous version of this regulation, the associations that request and receive permission to offer exotic wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

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 Horse Racing Commission and the Department of Revenue.

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

regulation. KRS 230.210, KRS 230.215, 230.361, 230.370.

(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 proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this proposed amendment will preserve tax revenue by allowing associations to continue offering exotic pari-mutuel wagers. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this proposed amendment will preserve tax revenue by allowing associations to continue to offer exotic pari-mutuel wagers. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This proposed amendment is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

(d) How much will it cost to administer this program for subsequent years? This proposed amendment is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

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: N/A

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Administrative Regulation)**

810 KAR 6:030. Pari-mutuel wagering.

RELATES TO: KRS 230.300, 230.361, 230.3615, 230.370, 230.398, 230.750

STATUTORY AUTHORITY: KRS 230.210, 230.215, 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to regulate conditions under which horse 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 wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the requirements for the operation of pari-mutuel wagering under KRS Chapter 230 and KAR Title 810, Chapter 6.

Section 1. Pari-Mutuel System of Wagering Required.

(1) The only wagering permitted on live or historical horse

races shall be under the pari-mutuel system of wagering. All systems of wagering other than pari-mutuel shall be prohibited. Any person participating or attempting to participate in prohibited wagering shall be ejected and excluded from association grounds.

(2) Wagering conducted in conformity with KRS Chapter 230 and KAR Title 810 is pari-mutuel.

Section 2. Totalizator or Other Approved Equipment Required.

(1) Pari-mutuel wagering on live and historical horse races shall only be conducted through the use of a totalizator or other similar mechanical equipment approved by the commission pursuant to KRS 230.361.

(2) The totalizator or other mechanical equipment shall be available for testing under the supervision of the commission upon request by the commission to ensure its proper working order.

Section 3. Wagering on Historical Horse Races Authorized.

(1) Wagering on historical horse races is hereby authorized and may be conducted in accordance with KRS Chapter 230 and KAR Title 810.

(2) Wagering on historical horse races shall only be conducted by:

(a) An association licensed to conduct a live horse race meet; or

(b) Two (2) or more associations licensed to conduct a live horse race meet:

1. Who form a joint venture; or
2. Pursuant to an agreement between them.

(3) Wagering on historical horse races shall only be permitted in a designated area on the licensed premises of an association licensed to conduct a live horse race meeting. Wagering on historical horse races shall not be offered in any other location.

(4) An association may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets conducted by the association. An association may conduct wagering on historical horse races on any days and hours approved by the commission, and shall not be limited to times during which the association is conducting a live horse race meeting.

(5) Any wager placed on a historical horse race or races is an exotic wager.

(6) Before offering wagering on historical horse races, an association shall first obtain the commission's written approval of all wagers offered as set forth in KAR Title 810.

(7) All wagering on historical horse races shall incorporate the following elements:

(a) A patron may only wager on historical horse races on a terminal approved by the commission;

(b) An association shall at all times maintain at least two (2) terminals offering each type of exotic wager on historical horse races;

(c) Once a patron deposits an amount in the terminal offering wagering on historical horse races, one or more historical horse races shall be made available for wagering;

(d) Prior to the patron making his or her wager selections, the terminal shall not display any information that would allow the patron to identify the historical horse race or races on which he or she is wagering, including the location of the race or races, the date on which the race or races was run, the names of the horses in the race or races, or the names of the jockeys that rode the horses in the race or races;

(e) The terminal shall make available true and accurate past performance information on the historical horse race to the patron prior to making his or her wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form; and

(f) After a patron finalizes his or her wager selections, the terminal shall display the patron's selections, the official results of each race, and a replay of the race or races, or a portion thereof, whether by digital or animated depiction or by way of a video recording. The identity of each race shall be revealed to the patron after the patron has placed his or her wager.

Section 4. Payouts through Pari-Mutuel Pools Authorized.

(1)(a) A wager on a historical horse race or races, less deductions permitted by KRS Chapter 230 or KAR Title 810, shall be placed in pari-mutuel pools approved by the commission.

(b) A payout to a winning patron shall be paid from money wagered by patrons and shall not constitute a wager against the association.

(c) An association conducting wagering on historical horse races shall not conduct wagering in such a manner that patrons are wagering against the association, or in such a manner that the amount retained by the association as a commission is dependent upon the outcome of any particular race or the success of any particular wager.

(2) An association offering wagering on historical horse races shall operate a pari-mutuel pool or pools in a manner and method approved by the commission. An association offering wagering on historical horse races may operate a player-funded pool or pools in a manner and method approved by the commission for the purpose of ensuring that sufficient funds are at all times available to pay any winning wagers in situations where a pari-mutuel pool becomes a minus pool as defined by 810 KAR 6:001. For each wager made, an association may assign a percentage of the wager to a player-funded pool or pools.

(3) If an association chooses to make a deposit into a trust account for the purpose of ensuring that sufficient funds are at all times available to pay any winning wagers in situations where a pari-mutuel pool becomes a minus pool, then such trust account must be approved by the commission.

Section 5. Location of Terminals Used for Wagering on Historical Horse Races.

(1) Terminals offering wagering on historical horse races shall be located within designated areas which have the prior written approval of the commission. Designated areas shall be established in such a way as to control access by the general public and prevent entry by any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers.

(2) Each association shall monitor persons entering and leaving the designated areas and shall prevent access to any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers on historical horse races.

(3) Each association shall provide terminals that are accessible to handicapped patrons.

Section 6. Records to be Maintained.

(1) Each association and each simulcast facility authorized under KRS 230.380 shall maintain complete records of all pari-mutuel wagering transactions on live and historical horse races, including the amounts wagered at each betting window, self-service totalizator, mobile pari-mutuel teller, and terminal.

(2) A copy of the wagering records shall be retained and safeguarded for a period of not less than two (2) years and shall not be destroyed without the prior written permission of the commission.

Section 7. Equipment.

(1) The association and the totalizator provider shall install a primary and secondary device, which activate the stop betting function of the totalizator system. The chief state steward, presiding judge, or his or her designee, shall use the primary device to stop wagering at the start of a live horse race. If wagering is not stopped by the primary device at the start of the race, the totalizator operator shall stop wagering using the secondary device. The secondary device shall be installed in the totalizator room and shall only be used by the totalizator operator.

(2) If there is a complete breakdown of the totalizator or mechanical equipment during the wagering on a live horse race, the wagering on that race shall be declared closed. If the totalizator remains capable of computing payouts, the payouts for that race shall be computed based on the amounts wagered prior to the breakdown. If the totalizator is incapable of computing payouts, then refunds shall be issued for all amounts wagered on that race.

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(3) If there is a complete breakdown of a terminal offering wagering on historical horse, the association offering the wager shall make a full refund of the patron's balance on the terminal at the time of the breakdown.

Section 8. Entries in a Live Horse Race.

(1) The chief state steward or presiding judge shall timely advise an association's pari-mutuel manager, prior to the beginning of wagering on each live horse race, of the horses that will compete in the race.

(2) If two (2) or more horses entered for the same live horse race are determined by the commission to have common ties through ownership or training, they may be joined by the commission as a mutuel entry. The mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. If the number of horses competing in a live horse race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator, together with horses of higher numbers, shall be grouped in the mutuel field as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

(3) A refund at cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race that has been scratched or withdrawn before the horse has become a starter, unless the horse is part of a mutuel entry, and one (1) or more of the entry starts.

Section 9. Sale of Pari-Mutuel Tickets on Live Horse Races.

(1) The following types of pari-mutuel wagering shall be permitted on a live horse race at all licensed associations and simulcast facilities:

(a) Normal win, place, and show wagers on each race;

(b) Any exotic wager previously approved by the commission; and

(c) Any new exotic wager approved in writing by the commission pursuant to KAR Title 810.

(2) Pari-mutuel tickets on live horse races shall not be sold except by a licensed association or a simulcast facility authorized by KRS 230.380.

(3) Pari-mutuel tickets on a live horse race shall only be sold at regular ticket windows, self-service totalizator machines, by mobile pari-mutuel tellers with hand-held totalizator devices, or by any other method approved in writing by the commission prior to being offered to the public. At least one (1) regular ticket window shall be made accessible to handicapped patrons.

(4)(a) Pari-mutuel stored value cards or cash vouchers may be offered by an association. The dollar amount on the stored value card or cash voucher may be redeemed at any time at any regular ticket window, or used to fund additional wagers.

(b) Cash vouchers shall be valid for one (1) year after the date of issuance. Failure to present any cash voucher for redemption within one (1) year of issuance shall constitute a waiver of the right to receive payment on the voucher.

(5) A pari-mutuel wager shall not be made on a race after the totalizator has been locked for that race.

(6) Any claim by a patron that he or she has been issued a pari-mutuel ticket other than that which was requested shall be made before the patron has left the ticket window or before the mobile teller has initiated a transaction with another patron. A claim for an incorrect ticket shall not be honored after the totalizator has been locked.

Section 10. Payment on Pari-Mutuel Tickets on Live Horse Races.

(1) At the end of each live horse race, the placing judges shall advise the manager of the pari-mutuel department by the use of the totalizator equipment or by telephone of the official placement of the horses, and payouts shall not be made until the receipt of the notice.

(2) Payment of valid pari-mutuel tickets shall be made on the

basis of the order of finish as declared "official" by the stewards or judges. A subsequent change in the order of finish or award of purse money that may result from a subsequent ruling by the stewards, judges, or commission shall not affect the pari-mutuel payout.

(3) Each association shall deduct from each pari-mutuel pool a commission, not exceeding the commission provided by KRS 230.3615 or KRS 230.750. The remainder of the pari-mutuel pool after the deduction of the commission shall be the net pool for distribution as payouts to ticket holders.

(4) Payment on valid pari-mutuel tickets shall be made only if presented and surrendered within one (1) year following the running of the live horse race on which the wager was made. Failure to present a ticket within one (1) year shall constitute a waiver of the right to receive payment on the ticket.

(5) The association shall be responsible for the correctness of all payout prices posted as "official." If an error is made in posting the payout figures, and ascertained before any tickets are cashed, the posting error shall be corrected, accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error.

(6) A mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall not be accepted for payment.

(7) An association shall establish a written procedure for granting patrons an opportunity to file a claim on a lost pari-mutuel ticket and provide a copy to the commission.

(8) Prior to posting payouts, the association's pari-mutuel manager shall require the verification of the winning runners and prices prior to posting official results.

(9)(a) If an error is made in calculating the payout on a winning wager, resulting in overpayment, the association shall be responsible for the amount between the correct payout and the amount paid.

(b) If the error in calculation results in a payout being too low, the amount between the correct payout and the amount paid shall be added to the net pool of the same position in the following race on the same day or, if it is the last race of the day, then it shall be added to the net pool of the same position in the same race on the following day. If an error occurs in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day.

(c) If an error occurs causing underpayment on the last race of the entire racing meeting, the amount of the underpayment shall be paid to the Kentucky Revenue Cabinet.

Section 11. Minimum Wagers and Payouts.

(1) The minimum wager to be accepted by any licensed association on a live horse race shall be ten (10) cents. The minimum payout on a one (1) dollar wager on a live horse race shall be one (1) dollars and ten (10) cents, unless a minus pool occurs. If a minus pool occurs, the minimum payout for a one (1) dollar wager shall be one (1) dollar and five (5) cents.

(2) The minimum wager to be accepted by an association on an exotic wager based on the outcome of a historical horse race or races shall be ten (10) cents. The minimum payout on any wager shall not be less than the amount wagered.

Section 12. Minors Prohibited from Wagering. A minor shall not be permitted by any licensed association or simulcast facility to purchase or cash a pari-mutuel ticket.

Section 13. Odds and payouts posted.

(1) Approximate odds for live horse races, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public at intervals of not more than ninety (90) seconds.

(2) If daily double wagering is conducted on a live horse race, before off-time of the second daily double race, the probable payout for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race shall be posted; except that if a dead heat for first in the first daily double race occurs, or a scheduled starter in the second daily double race is excused so as

to cause a consolation daily double pool, then posting of all possible payouts shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public by posting or public address announcement as soon as possible and prior to the running of the second daily double race.

(3) For wagering on historical horse races, approximate odds or payouts for each pari-mutuel pool shall be posted or made available on each terminal for viewing by patrons.

Section 14. Betting Explanation.

(1) Each association shall publish in the daily race program, for each day of live horse racing, a general explanation of pari-mutuel wagering offered on live horse races and an explanation of each type of pari-mutuel pool offered. The explanation also shall be posted in conspicuous places about the association grounds to adequately inform the public and shall be submitted to the commission prior to publication for approval.

(2) Each association shall post, in conspicuous places in the designated area, a general explanation of pari-mutuel wagering offered on historical horse races and an explanation of each pari-mutuel pool offered. The explanation shall be submitted to the commission for approval prior to its posting.

Section 15. Prior Approval Required for Number of Live Horse Races. Each association desiring to conduct more than nine (9) live horse races on a single day shall first apply in writing to the commission and obtain specific approval of the number of live horse races to be offered on a single day.

Section 16. Pari-mutuel Pools Dependent upon Entries for Live Horse Races.

(1) If horses representing five (5) or fewer betting interests qualify to start in a live horse race, the association may prohibit show wagering on that race. If horses representing four (4) or fewer betting interests qualify to start in a live horse race, the association may prohibit both place and show wagering on that race.

(2) If a horse is scratched by the stewards or judges after wagering has commenced, or if a horse is prevented from running in a live horse race because of failure of a starting-gate door to open properly, and the number of actual starters representing different betting interests is:

(a) Reduced to five (5), the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets; or

(b) Reduced to four (4) or fewer, the association may cancel both place and show wagering on that race and the entire place and show pool shall be refunded upon presentation and surrender of place and show tickets.

Section 17. Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not provided for by this administrative regulation, the pari-mutuel manager shall take immediate corrective action and shall by the quickest means possible notify the chief state steward or presiding judge and render a full report to the commission.

Section 18. Severability. 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.

JONATHAN RABINOWITZ, Chair
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: February 15, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on May 24, 2021 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511 via Zoom. 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 11:59 p.m. on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the Commonwealth. It authorizes pari-mutuel wagering on historical horse races and requires the use of pari-mutuel pools for such wagers. It establishes where, and under what circumstances, pari-mutuel wagering on live and historical horse races may take place. It places requirements on how winning pari-mutuel wagers shall be paid. It requires associations to maintain records regarding all pari-mutuel wagering at their facilities and to make them available to the commission on request. It establishes guidelines for the equipment used by the association to offer pari-mutuel wagering and provides requirements for the sale of pari-mutuel tickets. It establishes minimum wager amounts and payouts for pari-mutuel wagers on live and historical horse races.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which 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 wagering on horse races. This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation provides the specific rules for pari-mutuel wagering on live and historical horse races in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This regulation is not an amendment. It is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This regulation is not an amendment. It is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation is not an amendment. It is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation is not an amendment. It is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and

trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse races in the Commonwealth, and the commission.

(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: The licensed racing associations will be required to follow the procedure outlined in the regulation to offer pari-mutuel wagering. This regulation will not require the regulated entities to take any additional compliance measures that they are not already taking.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This new regulation is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The associations will be able to offer pari-mutuel wagering options to patrons. Pari-mutuel wagering will increase on-track attendance and total pari-mutuel handle. The increase revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This new regulation is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(b) On a continuing basis: This new regulation is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This new regulation is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This new regulation is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This new regulation is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. However, as in previous version of this regulation, the associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

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 Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.210, KRS 230.215, 230.361, and 230.370.

(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 new regulation is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this new regulation will preserve tax revenue by allowing associations to continue offering pari-mutuel wagering. As is the case under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 new regulation is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this new regulation will preserve tax revenue by allowing associations to continue offering pari-mutuel wagering. As is the case under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This new regulation is not anticipated to increase revenue any more than the current regulatory scheme does. As is the case under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

(d) How much will it cost to administer this program for subsequent years? This new regulation is not anticipated to increase revenue any more than the current regulatory scheme does. As is the case under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

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: N/A

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Administrative Regulation)**

810 KAR 8:025. Drug, medication, and substance withdrawal guidelines.

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and

wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the withdrawal guidelines for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian.

(1) This administrative regulation shall provide certain mandatory treatment requirements, guidance, and advice on medication withdrawal intervals.

(2)(a) These withdrawal guidelines do not apply to two (2) year-old or stakes horses pursuant to 810 KAR 8:010 Section 6.

(b) Unless otherwise specified in these withdrawal guidelines, Title 810 of the Kentucky Administrative Regulations, or Chapter 230 of the Kentucky Revised Statutes, the following withdrawal guidelines are voluntary and advisory. The guidelines are recommendations based on current scientific knowledge that may change over time.

(c) A licensee may present evidence of full compliance with these guidelines to the commission and the stewards as a mitigating factor to be used in determining violations and penalties.

(d) These withdrawal interval guidelines assume that administration of medications will be performed at doses that are not greater than the manufacturer's maximum recommended dosage, or the dosage recommended in this document. Medications administered at dosages above manufacturer's recommendations, in compounded formulations, or in combination with other medications or administration inside the withdrawal interval may result in test sample concentrations above threshold concentrations that could lead to positive test results and the imposition of penalties.

(e) The time of administration of an orally administered substance, for the purposes of withdrawal interval, shall be considered to be the time of complete ingestion of the medication by the horse via eating or drinking.

(f) For products containing multiple medications, the withdrawal time to be used should be no less than the longest identified for any of the individual constituent substances--even if that substance is not present in the highest concentration in the product.

(g) Brand names of medications, where applicable, are listed in parentheses following the generic name of a drug.

(3)(a) Withdrawal Guidelines. Furosemide shall be administered pursuant to 810 KAR 8:010.

(b) The following substances may be administered or applied up to the scheduled paddock time of the race in which the horse is to compete:

1. Topical applications, such as liniments, leg paints, salves, and ointments, which may contain antibiotics or DMSO, but do not contain steroids, anesthetics, or any other prohibited substances.

2. The following substances may be administered up to twenty-four (24) hours prior to the scheduled post time of the race in which the horse is to compete as long as their use follows Section 1(a) of this administrative regulation:

a. Antibiotics, except those containing prohibited drugs, such as Procaine;

b. Antiprotozoals, such as ponazuril (Marquis), toltrazuril (Baycox), sulfamethoxazole/pyrimethamine (Daraprim);

c. Antifungal agents, such as Griseofulvin and Ketoconazole;

d. Certain inhalation agents that do not exhibit bronchodilator properties, such as cromolyn sodium (Intal), and acetylcysteine (Mucomyst);

e. Cimetidine (Tagamet), orally at 20 mg/kg twice daily for 7 doses;

f. Electrolytes, Vitamins, and Minerals, via IV, IM or oral administration;

g. Any oral supplements or nutrients not containing drugs;

h. Hyaluronic Acid (Legend), via IV administration;

i. Misoprostol;

j. Non-Androgenic Reproductive Hormones, such as HCG,

Regumate and GnRH, in fillies and mares only;

k. Omeprazole (Gastrogard), orally at 2.2 g once daily for 4 days;

l. Polysulfated glycosaminoglycan (Adequan), via IM administration;

m. Propionibacterium acnes suspension (Eqstim), or comparable immunostimulants, excluding levamisole;

n. Ranitidine (Zantac), orally at 8 mg/kg twice daily for 7 doses; and

o. Sucralfate.

3. Non-steroidal anti-inflammatory drugs (NSAIDs):

a. Elected NSAID: Only one of the following three NSAIDs may be administered up to the manufacturer's maximum labeled dosage until forty-eight (48) hours prior to the scheduled post time of the race in which the horse is to compete, as long as their use follows Section 1(2) of this regulation and the requirements of 810 KAR 8:010.

(i) Phenylbutazone (Butazolidin) 4.4 mg/kg, via IV administration only;

(ii) Flunixin Meglumine (Banamine) 1.1 mg/kg, via IV administration only; and

(iii) Ketoprofen (Ketofen) 2.2 mg/kg, via IV administration only.

b. In accordance with the European Horserace Scientific Liaison Committee, the following withdrawal intervals shall be observed for all NSAIDs, except for those set forth in Section 1(b)(3)(a) of this regulation, for administration prior to the scheduled post time of the race in which the horse is to compete, as long as their use follows Section 1(2) of this regulation:

(i) Flunixin Meglumine (Banamine) 1.1 mg/kg, via IV administration: 6-day withdrawal interval;

(ii) Phenylbutazone (Butazolidin) 4.4 mg/kg, via IV administration: 7-day withdrawal interval;

(iii) Ketoprofen (Ketofen) 2.2 mg/kg, via IV administration: 4-day withdrawal interval;

(iv) Diclofenac Sodium Topical (Surpass Cream), via a single, 5-inch application: 7-day withdrawal interval; and

(v) Firocoxib (Equioxx) 0.1 mg/kg, via a single oral or IV dose, repeated daily administration: 15-day withdrawal interval from date of last administration.

c. The following substances have a forty-eight (48) hour withdrawal guidance prior to the scheduled post time of the race in which the horse is to compete as long as their use follows Section 1(2) of this regulation:

(i) Acepromazine (Promace), via IV administration at 0.05 mg/kg;

(ii) Butorphanol (Torbugesic), via IV administration at 0.1 mg/kg;

(iii) Cetirizine (Zyrtec), orally at 0.4 mg/kg twice daily for 5 doses; although it is recommended that ivermectin should not be administered within forty-eight (48) hours of a race if horse has been administered cetirizine;

(iv) Dantrolene (Dantrium), via oral administration at 500 mg total dose;

(v) Detomidine (Dormosedan), via IV administration at 5 mg single dose;

(vi) DMSO via IV, oral, or topical administration up to 60 ml;

(vii) Glycopyrrolate (Robinol), via IV administration at 1 mg total dose;

(viii) Guaifenesin, orally at 2 g twice daily for 5 doses;

(ix) Methocarbamol (Robaxin-V), via single IV at 15 mg/kg;

(x) Procaine penicillin, via IM administration at 17 mg/kg; and

(xi) Xylazine (Rompun), via IV administration at 200 mg single dose.

d. The following substances shall not be administered within forty-eight (48) hours of a race:

(i) Beta-2 agonists by inhalation, such as terbutaline, salmeterol, and fenoterol;

(ii) Ergot alkaloids, such as Ergonovine and Methergine;

(iii) Ipratropium;

(iv) Isoxsuprine; and

(v) Pentoxifylline (Trental).

e. The following substances may be administered up to seventy-two (72) hours prior to the scheduled post time of the race

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in which the horse is to compete as long as their use follows Section 1(2) of this regulation:

- (i) Albuterol (Proventil) via inhalation at 720 mcg;
- (ii) Dexamethasone (Azium), via oral, IV, IM administration at 0.05 mg/kg. However, if another corticosteroid was administered systemically or intra-articularly, this withdrawal guidance does not apply and a minimum five (5) day withdrawal is recommended;
- (iii) Lidocaine, via subcutaneous administration at 200 mg total dose;
- (iv) Mepivacaine (Carbocaine), via subcutaneous administration at 0.07 mg/kg;
- (v) Romifidine (Sedivet), via IV administration at 50 mg.

f. The following substances may be administered up to ninety-six (96) hours prior to the scheduled post time of the race in which the horse is to compete as long as their use follows Section 1(2) of this regulation:

- (i) Hydroxyzine (Atarax); and
- (ii) Phenytoin (Dilantin).

g. Reserpine (Serpasil) may be administered up to seven (7) days prior to the scheduled post time of the race in which the horse is to compete as long as its use follows Section 1(2) of this regulation.

h. The use of an extra-corporeal shock wave therapy or radial pulse wave therapy machine may be performed until ten (10) days prior to the scheduled post time of the race in which the horse is to compete, as long as its use complies with 810 KAR 8:010.

i. The following substance may be administered up to twenty-one (21) days prior to the scheduled post time of the race in which the horse is to compete, as long as its use follows Section 1(2) of this regulation, and its use complies with 810 KAR 8:010 Section 10: Clenbuterol (Ventipulmin), orally up to 0.8 mcg/kg twice daily.

j. Any horse that has been treated with therapeutic medications found in Section 1 of this regulation may, at the trainer's request and expense, and on permission of a commission veterinarian, have samples of blood and/or urine collected by the commission veterinarian for analysis by the commission-authorized laboratory

prior to entry to race in the state of Kentucky.

(i) As a condition of this elective testing, the trainer will be required to disclose the date and time, dose, and route of administration of the substance for which clearance testing is requested.

(ii) A report from the commission laboratory of a negative finding in this pre-race, elective testing does not provide a safe harbor for the owner, trainer, veterinarian, or horse. A report from the commission laboratory of a positive finding in a post-race sample shall be treated as a violation of KHRC regulations even if there was a negative finding by the commission laboratory in the clearance testing sample.

k. The following have a fourteen (14) day stand down period for intra-articular injection. Any IA corticosteroid injection within fourteen (14) days is a violation:

(i) Betamethasone, via IA administration at 9 mg total dose in a single articular space. Withdrawal time should be increased for use of betamethasone products with a ratio of greater than 1:1 betamethasone acetate to betamethasone sodium phosphate. Intramuscular administration is associated with substantially longer withdrawal times.

(ii) Isoflupredone (Predef 2x), via IA administration at 20 mg in a single joint space or 10 mg subcutaneous.

(iii) Methylprednisolone (Depo-Medrol), via IA administration at a total dose of less than 100 mg in a single articular space. Intramuscular administration is associated with substantially longer withdrawal times and is not recommended, in accordance with the Racing Medication and Testing Consortium. Clearance testing is recommended in blood and urine prior to entry.

(iv) Triamcinolone acetonide (Vetalog), via IA administration at 9 mg total dose in a single articular space. Intramuscular administration is associated with substantially longer withdrawal times.

l. It is recommended that any horses receiving Fluphenazine (Prolixin) receive pre-race clearance testing.

(4) Withdrawal Guidelines Chart:

Substance	Brand Name	Recommended Minimum Withdrawal	Administration Specifications
Acepromazine	PromAce	48 hours	0.05 mg/kg via IV administration
Acetylcysteine	Mucomyst	24 hours	Inhalation
Albuterol	Proventil	72 hours	720 mcg via inhalation
Beclomethasone	Beclivent	24 hours	Inhalation only
Butorphanol	Torbugesic	48 hours	0.1 mg/kg via IV administration
Cetirizine	Zyrtec	48 hours	0.4 mg/ml orally twice daily for 5 doses
Cimetadine	Tagamet	24 hours	20 mg/kg orally twice daily for 7 doses
Clenbuterol	Ventipulmin	21 days	0.8 mcg/kg orally
Cromolyn sodium	Intal	24 hours	Inhalation
Dantrolene	Dantrium	48 hours	500 mg orally
Detomidine	Dormosedan	48 hours	5 mg via IV administration
Dexamethasone	Azium	72 hours IV PO, with no other corticosteroids administered. 5 days if other corticosteroids have been administered.	IV, PO, IM, pursuant to the European Horserace Scientific Liaison Committee.
DMSO		48 hours	Topical, IV, or oral administration up to 60 ml
Ergonovine		48 hours	No dose specified
Fenoterol		48 hours	Via inhalation, no dose specified
Furosemide 2-year-olds beginning in 2020 Stakes horses beginning in 2021	Salix	24 hours	Administration is not permitted at less than 24 hours, and limited to a maximum 500 mg single dose via IV administration
Furosemide	Salix	4 hours	150-500 mg single IV dose administered by KHRC veterinarian. See 810 KAR 8:010 Section 6.
Guaifenesin		48 hours	2 g orally twice daily for 5 doses
Glycopyrrolate	Robinol	48 hours	1 mg
Griseofulvin	Fulvacin	24 hours	No dose specified
Hyaluronic Acid	Legend	24 hours	IV administration only; no dose specified

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Hydroxyzine	Atarax	96 hours	No dose specified
Ipratropium		48 hours	Via inhalation, no dose specified
Isoxsuprine	Vasodilan	48 hours	No dose specified
Ketoconazole	Nizoral	24 hours	No dose specified
Lidocaine		72 hours	200 mg total dose SQ
Mepivacaine	Carbocaine	72 hours	0.07 mg/kg SQ
Methocarbamol	Robaxin	48 hours	15 mg/kg single IV
Methylergonovine	Methergine	48 hours	No dose specified
Misoprostol	Cytotec	24 hours	No dose specified
Omeprazole	Gastrogard	24 hours	2.2 g orally once daily for 4 days
Omeprazole	Gastrogard	24 hours	2.2 g orally once daily for 4 days
Pentoxifylline	Trental	48 hours	No dose specified
Phenytoin	Dilantin	96 hours	No dose specified
Ponazuril/Diclazuril/Sulfadiazine-Pyrimethamine	Marquis/Protazil	24 hours	Oral
Procaine Penicillin		48 hours	17 mg/kg IM Procaine penicillin treatments must be reported to the stewards no later than twenty-four (24) hours after the last injection is administered. Horses so treated may be required to be under commission-approved, continuous surveillance for the six-hour interval prior to the post time for the race in which the horse is entered. The owner of the horse is responsible for all costs associated with the surveillance. Prospective surveillance arrangements must be submitted to the stewards no later than close of business on the day of entry.
PSGAG	Adequan	24 hours	Via IM administration
Ranitidine	Zantac	24 hours	8 mg/kg orally twice daily for 7 doses
Reserpine	Serpasil	7 days	No dose specified
Romifidine	Sedivet	72 hours	50 mg via IV administration
Salmeterol		48 hours	Via inhalation, no dose specified
Sucralfate	Carafate	24 hours	No dose specified
Terbutaline		48 hours	No dose specified
Xylazine	Rompun	48 hours	200 mg via IV administration

(5) NSAID withdrawal guidelines chart:

Substance	Brand Name	Recommended Minimum Withdrawal	Administration Specifications
Phenylbutazone	Butazolidin	48 hours—single elected NSAID. If this is not the single elected NSAID, then 7 days, pursuant to the European Horserace Scientific Liaison Committee.	4.4 mg/kg via IV administration
Flunixin	Banamine	48 hours—single elected NSAID. If this is not the single elected NSAID, then 6 days, pursuant to the European Horserace Scientific Liaison Committee.	1.1 mg/kg via IV administration
Ketoprofen	Ketofen	48 hours—single elected NSAID, If this is not the single elected NSAID, then 4 days, pursuant to the European Horserace Scientific Liaison Committee.	2.2 mg/kg via IV administration
Diclofenac	Surpass	7 days, pursuant to the European Horserace Scientific Liaison Committee.	5 inch ribbon of Surpass every 12 hours to one site
Firocoxib	Equioxx	15 days, pursuant to the European Horserace Scientific Liaison Committee.	0.1 mg/kg once daily for 4 days

(6) Miscellaneous withdrawal guidelines chart:

Substance	Brand Name	Recommended Minimum Withdrawal	Administration Specifications
Anthemintics (except thiazide products)		72 hours	
Non-androgenic reproductive hormones	Including HCG, Regumate, GnRH, in fillies and mares only	24 hours	
Propionibacterium acnes suspension or comparable immunostimulants		24 hours	
Electrolytes, vitamins, minerals		24 hours	Via IV or IM administration
Antibiotics		24 hours	

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Any injectable other than furosemide		24 hours	KHRC regulations specifically prohibit any injections at less than 24 hours to post time for any substance.
Intra-articular injections, other than corticosteroids		72 hours	

(7) Available Threshold Levels Associated to KHRC Withdrawal Guidelines:

SUBSTANCE	THRESHOLD
Acepromazine	10 nanograms per ml in urine of hydroxyethylpromazine sulfoxide (HEPS)
Albuterol	1 nanogram per ml in urine
Boldenone Male horses other than Geldings	15 nanograms per ml in urine of boldenone, free and conjugated OR 25 picograms per ml in serum or plasma of boldenone, free
Boldenone Geldings and female horses	1 nanogram per ml in urine of boldenone, free and conjugated
Butorphanol	2 nanograms per ml in serum or plasma of butorphanol, free OR 300 nanograms per ml in urine of total butorphanol
Cetirizine	6 nanograms per ml in serum or plasma
Cimetadine	400 nanograms per ml in serum or plasma
Clenbuterol	140 picograms per ml of urine OR Limit of detection in both urine and blood
Dantrolene	0.1 nanograms per ml of serum or plasma of 5-OH dantrolene
Detomidine	2 nanogram per ml in urine of carboxydetomidine OR 1 nanogram per ml of detomidine in serum or plasma
Diclofenac	5 nanograms per ml in serum or plasma
DMSO	10 micrograms per ml in serum or plasma
Firocoxib	20 nanograms per ml in serum or plasma
Flunixin	5 nanograms per ml in serum or plasma
Furosemide	For horses eligible to race on furosemide, 100 nanograms per ml in serum or plasma AND Urine specific gravity of less than 1.010 OR 1 nanogram per ml in serum or plasma for 2-year-olds beginning in 2020 or stakes horses beginning in 2021, see 810 KAR 8:010
Glycopyrrolate	3 picograms per ml in serum or plasma
Guaifenesin	12 nanograms per ml in serum or plasma
Ketoprofen	2 nanograms per ml of serum or plasma
Lidocaine	20 picograms per ml in serum or plasma of Total 3-OH-lidocaine
Mepivacaine	10 nanograms per ml in urine of OH-mepivacaine OR Limit of detection in serum or plasma
Methocarbamol	1 nanogram per ml in serum or plasma
Methylprednisolone	100 picograms per ml in serum or plasma
Nandrolone Male horses other than geldings	45 nanograms per ml in urine of 5 α -estrane-3 β , 17 α -diol OR In urine a ratio of 5 α estrane-3 β , 17 α -diol to 5 α estrane-3 β , 17 α -diol of > 1:1
Nandrolone Geldings and female horses	1 nanogram per ml in urine of nandrolone, free and conjugated OR 50 picograms per ml of procaine in blood, serum, or plasma of nandrolone, free
Omeprazole	10 nanograms per ml omeprazole sulfide in serum or plasma
Phenylbutazone	0.3 micrograms per ml in serum or plasma
Prednisolone	10 nanograms per ml free Prednisolone in urine
Procaine Penicillin Horses reported to have been treated with procaine penicillin	25 nanograms per ml of procaine in serum or plasma Procaine penicillin treatments must be reported to the stewards no later than 24 hours after the last injection is administered. Horses so treated may be required to be under KHRC approved, continuous surveillance for the six hour interval prior to the post time for the race in which the horse is entered. The owner of the horse is responsible for all costs associated with the surveillance. Prospective surveillance arrangements must be submitted to the stewards no later than close of business on the day of entry.
Procaine Penicillin Horses not reported to have been treated with procaine penicillin	Limit of detection for procaine in serum or plasma 2 nanograms per ml of serum or plasma. Procaine penicillin treatments must be reported to the stewards no later than 24 hours after the last injection is administered. Horses so treated may be required to be under KHRC approved, continuous surveillance for the six hour interval prior to the post time for the race in which the horse is entered. The owner of the horse is responsible for all costs associated with the surveillance. Prospective surveillance arrangements must be submitted to the stewards no later than close of business on the day of entry.

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Ranitidine	40 nanograms per ml in serum or plasma
Testosterone Geldings	20 nanograms per ml in urine of testosterone, free and conjugated OR 25 picograms per ml in serum or plasma of testosterone, free
Testosterone Female horses (unless in foal)	55 nanograms per ml in urine of testosterone, free and conjugated OR 100 picograms per ml in serum or plasma of testosterone, free
Xylazine	200 picograms per ml in serum or plasma

(8) All other NSAIDs not listed on the withdrawal guidelines have a threshold set at limit of detection in serum or plasma.

JONATHAN RABINOWITZ, Chair
KERRY HARVEY, Secretary

APPROVED BY AGENCY: March 4, 2021

FILED WITH LRC: March 5, 2021 at 12:43 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on May 24, 2021 at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511 via Zoom. 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 11:59 p.m. on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets recommended medication withdrawal guidelines and also sets mandatory medication threshold levels associated with those withdrawal guidelines.

(b) The necessity of this administrative regulation: This regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications before and during race meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants to horses prior to the horse participating in a race. This administrative regulation establishes the withdrawal guidelines and maximum thresholds for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on and before racing dates, and in a manner that is consistent with the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation. This regulation codifies a document that was previously incorporated by reference in 810

KAR 8:020. Specifically, this regulation now codifies the commission's withdrawal guidelines and mandatory threshold levels in a regulation, rather than in an incorporated document. This document is the same as the previous version of the withdrawal guidelines and threshold levels, but for one change. Specifically, it states that the acceptable threshold level for clenbuterol is the level of detection. This new regulation was necessary to ensure that medications are used appropriately on and before racing dates, and in a manner that is consistent with the integrity of racing.

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred and standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

(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: Participants in horse racing, and especially owners, trainers, and veterinarians, will be required to adhere to the requirements and rules set forth in the Withdrawal Guidelines and Available Threshold Levels, which pertain to the use of medications in horse racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No new costs are anticipated to comply with this administrative regulation, as Kentucky's licensees have operated in accordance with similar requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

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

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

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 Horse Racing Commission 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 230.215, 230.225, 230.240, 230.260, 230.300

(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 administrative regulation will not generate revenue for state or local government 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 not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for the subsequent years.

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

Revenues (+/-): Neutral.
Expenditures (+/-): Neutral.
Other Explanation: NA

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Health Benefit Exchange
(New Administrative Regulation)

900 KAR 10:111. Definitions for 900 KAR Chapter 10.

RELATES TO: KRS 13B.010, 13B.130, 194A.005(1), 210.370-210.480, 304.1-050(2), 304.1-110(1), 304.9-020(1), (5), 304.9-040, 304.14-030, 304.17A-005, 304.17A-500(9), 304.17C-010(4), 8 U.S.C. 1101(a)(3), 25 U.S.C. 1603(13), 36B, 151, 5000A, 42 U.S.C. 300gg-15, 300gg-91, 301, 9902(2), 18021, 18022, 18031, 18042, 18054, 18082, 26 C.F.R. 1.36B-1(e), 54.4980B-1, 54.9801-2, 42 C.F.R. Parts 430-456, 435.603(e), 457.10, 45 C.F.R. 144.103, 152.2, 155.20, 155.105, 155.205, 155.210, 155.225, 155.300, 155.310(g), 155.330, 155.335, 155.410, 155.420, 155.430, 155.710, 155.715, 155.1065, 156.140(c), 156.155, 156.200-156.295

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Benefit Exchange has responsibility to administer the Kentucky Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of

the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the definitions for 900 KAR Chapter 10.

Section 1. Definitions.

(1) "Actuarial value" means the percentage of the total allowed costs of benefits paid by a health plan.

(2) "Advance payments of the premium tax credit" or "APTC" means payment of the tax credits that are:

(a) Authorized by 26 U.S.C. 36B and its implementing regulations; and

(b) Provided on an advance basis to an eligible individual enrolled in a qualified health plan through an exchange in accordance with 42 U.S.C. 18082.

(3) "Adverse witness" means a person who gives unfavorable evidence against the party that called him or her as its witness.

(4) "Agent" is defined by KRS 304.9-020(1).

(5) "Annual open enrollment period" is defined by 45 C.F.R. 155.410(e).

(6) "Appeal record" means the official record of hearing as established by KRS 13B.130(1) through (10).

(7) "Appeal request" means a clear expression, either orally or in writing, by an applicant or enrollee to have an eligibility determination or redetermination contained in a notice issued in accordance with 45 C.F.R. 155.310(g) or 45 C.F.R. 155.330(e)(1)(ii).

(8) "Appellant" means the applicant or enrollee who is requesting an appeal.

(9) "Applicant" is defined by 45 C.F.R. 155.20.

(10) "Application filer" is defined by 45 C.F.R. 155.20.

(11) "Benefit year" means a calendar year for which a health plan provides coverage for health benefits.

(12) "Business entity" is defined by KRS 304.9-020(5).

(13) "Cabinet for Health and Family Services" or "CHFS" is defined by KRS 194A.005(1).

(14) "Cancellation" is defined by 45 C.F.R. 155.430(e)(2).

(15) "Catastrophic plan" means a health plan that meets the conditions of 45 C.F.R. 156.155.

(16) "Certificate of authority" is defined by KRS 304.1-110(1).

(17) "Certification" means a determination made on the KHBE by the division that a health plan or a stand-alone dental plan has met the requirements in 900 KAR 10:115.

(18) "Certified application counselor" or "CAC" means an individual employed by, or volunteer of, an entity designated by the division to perform the functions described in 45 C.F.R. 155.225.

(19) "Child-only plan" means an individual health policy that provides coverage to an individual under twenty-one (21) years of age and meets the requirements of 45 C.F.R. 156.200(c)(2).

(20) "Children's Health Insurance Program" or "CHIP" is defined by 42 C.F.R. 457.10.

(21) "COBRA" is defined by 26 C.F.R. 54.4980B-1.

(22) "Consultant" is defined by KRS 304.9-040.

(23) "Consumer operated and oriented plan" or "CO-OP" means a private, non-profit health insurance issuer that:

(a) Is established by 42 U.S.C. 18042; and

(b) Has a certificate of authority.

(24) "Cost sharing" is defined by 45 C.F.R. 155.20.

(25) "Cost sharing reduction" or "CSR" means a reduction in cost sharing for an eligible individual enrolled in a silver level plan in the KHBE or for an individual who is an Indian enrolled in a qualified health plan in the KHBE.

(26) "DAH" means the Division of Administrative Hearings of the Cabinet for Health and Family Services.

(27) "Date of notice" means the date on the notice plus five (5) calendar days.

(28) "Dental insurer" or "stand-alone dental plan issuer" means an insurer as defined by KRS 304.17C-010(4) that offers a limited health service benefit plan for dental services.

(29) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.

(30) "Department of Insurance" or "DOI" means the department defined by KRS 304.1-050(2).

- (31) "Dependent" is defined by 26 C.F.R. 54.9801-2.
- (32) "Desk Review" means an administrative review of:
- (a) Information submitted as part of the application process;
 - (b) Any supporting documentation used to determine or redetermine an appellant's eligibility; and
 - (c) Any additional information submitted for consideration as part of the appeal request.
- (33) "Division of Health Benefit Exchange" or "division" means the division created to administer the KHBE.
- (34) "Employee" is defined by 42 U.S.C. 300gg-91(d)(5).
- (35) "Employer" is defined by 42 U.S.C. 300gg-91(d)(6).
- (36) "Enrollee" means an eligible individual enrolled in a qualified health plan or qualified stand-alone dental plan.
- (37) "Essential community provider" means either a:
- (a) Provider determined and approved by HHS as an essential community provider for the Commonwealth of Kentucky; or
 - (b) Regional community services program for mental health or individuals with an intellectual disability established pursuant to KRS 210.370 through KRS 210.480, operating in Kentucky, and licensed pursuant to 902 KAR 20:091.
- (38) "Essential community provider category" means a provider as established in 45 C.F.R. 156.235(a)(2)(ii)(B).
- (39) "Essential health benefits" means benefits as identified by 42 U.S.C. 18022 and approved by the Secretary of HHS for the Commonwealth of Kentucky.
- (40) "Exemption" means an exemption from the shared responsibility payment.
- (41) "Family size" means the number of individuals in a family for whom a taxpayer properly claims a deduction for a personal exemption under 26 U.S.C. 151 for the taxable year.
- (42) "Federal poverty level" or "FPL" means the most recently published federal poverty level, updated periodically in the Federal Register by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2), as of the first day of the annual open enrollment period for coverage in a qualified health plan through the Kentucky Health Benefit Exchange.
- (43) "Final order" is defined by KRS 13B.010(6).
- (44) "Formal review request" means a clear expression, either orally or in writing, by a small business employer to have any eligibility determination or redetermination contained in a notice issued in accordance with 45 C.F.R. 155.310(g), 45 C.F.R. 155.330(e)(1)(ii), 45 C.F.R. 155.335(h)(1)(ii), or 45 C.F.R. 155.715(e) or (f).
- (45) "Full-time employee" is defined by 45 C.F.R. 155.20.
- (46) "Group participation rate" means the minimum percentage of all eligible individuals or employees of an employer that is required to be enrolled
- (47) "Health plan" is defined by 42 U.S.C. 18021(b)(1).
- (48) "Health plan form" or "form" means an application, policy, certificate, contract, rider, endorsement, provider agreement, or risk sharing arrangement filed in accordance with 806 KAR 14:007 and 806 KAR 17:300.
- (49) "Health Reimbursement Arrangement" or "HRA" means a plan funded solely by employer contributions that reimburses employees for medical care and other qualified expenses, incurred by the employee, or his spouse, dependents, and any children who, as of the end of the taxable year, have not attained age 27, up to a maximum amount for a coverage period.
- (50) "Hearing" is defined by KRS 13B.010(2).
- (51) "Hearing officer" means a hearing officer employed by DAH.
- (52) "Household income" is defined by 26 C.F.R. 1.36B-1(e).
- (53) "Indian" is defined by 25 U.S.C. 1603(13).
- (54) "Individual exchange" means the Kentucky Health Benefit Exchange that serves the individual health insurance market.
- (55) "Individual market" is defined by KRS 304.17A-005(28).
- (56) "Insurance affordability program" means one (1) of the following:
- (a) A state Medicaid program under title XIX of the Social Security Act, 42 U.S.C. 301 et seq.;
 - (b) A state children's health insurance program (CHIP) under title XXI of the Social Security Act, 42 U.S.C. 301 et seq.;
 - (c) A program that makes coverage in a qualified health plan

- through the exchange with advance payments of the premium tax credit available to qualified individuals; or
- (d) A program that makes coverage in a qualified health plan through the exchange with CSRs available to qualified individuals.
- (57) "Issuer" is defined by 45 C.F.R. 144.103.
- (58) "Issuer application assister" means an employee, contractor, or agent of a QHP issuer who is not licensed as an agent, broker, or producer under state law and who assists individuals in the individual market with applying for a determination or redetermination of eligibility for coverage through the KHBE or for insurance affordability programs.
- (59) "Judicial review" means a court's review of factual or legal findings of an administrative body.
- (60) "Kentucky Children's Health Insurance Program" or "KCHIP" means the separate child health program established by the commonwealth of Kentucky to administer CHIP.
- (61) "Kentucky Health Benefit Exchange" or "KHBE" or "Exchange" means the Kentucky state-based exchange approved by HHS pursuant to 45 C.F.R. 155.105 to offer a QHP or SADP that utilizes the state provided information technology infrastructure known as kynect to provide for eligibility determinations and consumer enrollment in qualified health plans and stand-alone dental plans and that includes:
- (a) An individual exchange; and
 - (b) SHOP.
- (62) "Kentucky online gateway" or "KOG" means the system for identity authentication services used by the division to register a kynector or agent.
- (63) "kynector" means a CAC or navigator.
- (64) "Lawfully present" is defined by 45 C.F.R. 152.2.
- (65) "MAGI-based income" is defined by 42 C.F.R. 435.603(e).
- (66) "Managed care plan" is defined by KRS 304.17A-500(9).
- (67) "Medicaid" means the program established pursuant to 42 C.F.R. parts 430 through 456.
- (68) "Metal level of coverage" means health care coverage provided within the variation established in 45 C.F.R. 156.140(c) of the full actuarial value as follows:
- (a) Bronze level with an actuarial value of sixty (60) percent;
 - (b) Silver level with an actuarial value of seventy (70) percent;
 - (c) Gold level with an actuarial value of eighty (80) percent;
- and
- (d) Platinum level with an actuarial value of ninety (90) percent.
- (69) "Minimum essential coverage" or "MEC" is defined by 26 U.S.C. 5000A(f).
- (70) "Multi-state plan" means a health plan that is offered under a contract with the U.S. Office of Personnel Management in accordance with 42 U.S.C. 18054.
- (71) "Navigator" means an entity that is selected by the division and shall comply with the requirements of 42 U.S.C. 18031(i), 45 C.F.R. 155.205(d)-(e), and 45 C.F.R. 155.210.
- (72) "Non-citizen" means "alien" as defined by 8 U.S.C. 1101(a)(3).
- (73) "Organization" means an entity as follows:
- (a) Community health center;
 - (b) Hospital;
 - (c) Health care provider;
 - (d) Indian health service provider;
 - (e) Ryan White HIV/AIDS provider;
 - (f) Behavioral or mental health provider; or
 - (g) An agency with experience providing social services, nutrition assistance, energy assistance, legal services, or tax assistance that is a:
 1. Non-federal government entity;
 2. 501(c) organization; or
 3. Local government agency.
- (74) "Participating agent" means an agent who has been registered with the division on KHBE through KOG.
- (75) "Participation agreement" means an agreement between the division and the issuer to offer a QHP or stand-alone dental plan on the KHBE.
- (76) "Pediatric dental essential health benefit" means the pediatric dental services required by 42 U.S.C. 18022(b)(1)(J) and provided to an individual under the age of twenty-one (21) years.

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(77) "Personal exemption deduction" means an amount that can be deducted from taxable income based on the exemption given to any tax filer who cannot be claimed as a dependent by another tax filer.

(78) "Personally identifiable information" means any data about an individual that could potentially identify that individual.

(79) "Plan management data template" means the data collection templates that are:

(a) Used to facilitate data submission through SERFF for certification of qualified health plan issuers, qualified health plans, qualified stand-alone dental plan issuers, and qualified stand-alone dental plans as established in CMS Form Number CMS-10433, as amended; and

(b) Located at <https://www.qhpcertification.cms.gov/s/QHP>.

(80) "Plan year" means a consecutive twelve (12) month period during which a health plan provides coverage for health benefits.

(81) "Premium" is defined by KRS 304.14-030.

(82) "Provider network" is defined by KRS 304.17A-005(38).

(83) "Qualified employer" means an employer that elects to make, at a minimum, all full-time employees of the employer eligible for one (1) or more QHPs or SADPs in the small group market offered through the SHOP.

(84) "Qualified health plan" or "QHP" means a health plan that meets the standards established in 45 C.F.R. 156 Subpart C, 156.200-156.295, and that has in effect a certification issued by the division on the KHBE.

(85) "Qualified individual" means an individual who has been determined eligible to enroll through the KHBE in a QHP or SADP in the individual market.

(86) "Qualified small employer health reimbursement arrangement" or "QSEHRA" means an HRA for use by small employers.

(87) "Qualifying coverage in an eligible employer-sponsored plan" means coverage in an eligible employer-sponsored plan that meets the affordability and minimum value standards established by 26 U.S.C. 36B(c)(2)(C).

(88) "Qualifying event" means an event that triggers a SEP for an individual to enroll in health insurance coverage.

(89) "Recommended order" is defined by KRS 13B.010(5).

(90) "Service area" means a geographical area in which an issuer may offer a QHP.

(91) "Shared responsibility payment" means a penalty imposed for failing to meet the requirement to maintain minimum essential coverage in accordance with 26 U.S.C. 5000A.

(92) "SHOP" means a Small Business Health Options Program operated by the Kentucky Health Benefit Exchange through which small employers that meet the standards established in 45 C.F.R. 155.710 may obtain an eligibility determination from KHBE that allows the small employer to purchase one (1) or more QHPs or SADPs that have been certified by KHBE through either:

(a) A participating agent; or

(b) An issuer offering QHPs or SADPs on the KHBE.

(93) "Silver level" is defined by 42 U.S.C. 18022(d)(1)(B).

(94) "Small employer" is defined by KRS 304.17A-005(44).

(95) "Small group" is defined by KRS 304.17A-005(45).

(96) "Special enrollment period" or "SEP" means a period, as described in 45 C.F.R. 155.420, during which a qualified individual or enrollee who experiences certain qualifying events may enroll in, or change enrollment in, a QHP through the KHBE outside the annual open enrollment period.

(97) "Stand-alone dental plan" or "SADP" means a dental plan as established by 45 C.F.R. 155.1065 that has been certified by the division on the KHBE to provide dental benefits, including a pediatric dental essential health benefit.

(98) "Summary of Benefits and Coverage" or "SBC" means a standard format, created in accordance with 42 U.S.C. 300gg-15, for providing information to consumers about a health plan's coverage and benefits.

(99) "System for Electronic Rate and Form Filing" or "SERFF" means an online system established and maintained by the National Association of Insurance Commissioners (NAIC) that enables an issuer to send and a state to receive, comment on, and approve or reject rate and form filings.

(100) "Tax filer" is defined by 45 C.F.R. 155.300.

(101) "Termination" is defined by 45 C.F.R. 155.430(e)(1).

(102) "Training" means the training established by the division for agents and kynectors.

(103) "Vacate" means to set aside a previous action.

ROBERT PUTT, Executive Director

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 12, 2021

FILED WITH LRC: March 15, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 24, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 17, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Advisor, 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: Melea Rivera and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions used for 900 KAR Chapter 10

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide definitions used in the administrative regulations contained within 900 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that issuers, agents, kynectors, individuals wishing to participate on the KHBE, and small employers wishing to participate on SHOP are aware of the definitions used within 900 KAR Chapter 10.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist issuers, agents, kynectors, individuals wishing to participate on the KHBE, and small employers wishing to participate on SHOP by providing the definitions used within 900 KAR Chapter 10.

(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 government affected by this administrative regulation: This administrative regulation will affect approximately 80,000 individuals that may apply for health insurance in a qualified health plan to be offered on the Kentucky Health Benefit Exchange, 7 issuers, approximately 300 agents, approximately 350 kynectors, and 100 small employers wishing to

participate on SHOP. This administrative regulation will also affect the Kentucky Department of Insurance.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will use this administrative regulation for guidance related to the definitions used in 900 KAR Chapter 10.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide the definitions used for 900 KAR Chapter 10.

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

(a) Initially: The estimated cost to implement a state-based exchange will be \$5,000,000 to the state but will result in significant savings to Kentuckians through reductions in health insurance premiums.

(b) On a continuing basis: The estimated cost will be \$2,000,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Division of Health Benefit Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate 8 U.S.C. 1101(a)(3), 25 U.S.C. 1603(13), 36B, 151, 5000A, 42 U.S.C. 300gg-15, 300gg-91, 301, 9902(2), 18021, 18022, 18031, 18042, 18054, 18082, 26 C.F.R. 1.36B-1(e), 54.4980B-1, 54.9801-2, 42 C.F.R. Parts 430-456, 435.603(e), 457.10, 45 C.F.R. 144.103, 152.2, 155.20, 155.105, 155.205, 155.210, 155.225, 155.300, 155.310(g), 155.330, 155.335, 155.410, 155.420, 155.430, 155.710, 155.715, 155.1065, 156.140(c), 156.155, 156.200-156.295.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the definitions used for 900 KAR Chapter 10.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS. This administrative regulation establishes the definitions used in 900 KAR Chapter 10, which is the chapter related to the functions of KHBE.

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. This administrative regulation does not impose stricter requirements than those required by the federal mandate.

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 affects the Office of Health Data and Analytics, Division of Health Benefit Exchange within the Cabinet for Health and Family Services and the Department of Insurance within the Public Protection and Regulation Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.010, 13B.130, 194A.005(1), 210.370-210.480, 304.1-050(2), 304.1-110(1), 304.9-020(1), (5), 304.9-040, 304.14-030, 304.17A-005, 304.17A-500(9), 304.17C-010(4), 8 U.S.C. 1101(a)(3), 25 U.S.C. 1603(13), 36B, 151, 5000A, 42 U.S.C. 300gg-15, 300gg-91, 301, 9902(2), 18021, 18022, 18031, 18042, 18054, 18082, 26 C.F.R. 1.36B-1(e), 54.4980B-1, 54.9801-2, 42 C.F.R. Parts 430-456, 457.10, 45 C.F.R. 144.103, 152.2, 155.20, 155.105, 155.205, 155.210, 155.225, 155.300, 155.310(g), 155.330, 155.335, 155.410, 155.420, 155.430, 155.715, 155.1065, 156.140(c), 156.155, 156.200-156.295.

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 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.

(c) How much will it cost to administer this program for the first year? Approximately \$2,000,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$2,000,000.

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

Revenues (+/-):
Expenditures (+/-): \$2,000,000
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Health Benefit Exchange
(New Administrative Regulation)

900 KAR 10:115. Exchange participation requirements and certification of qualified health plans and qualified stand-alone dental plans.

RELATES TO: KRS Chapter 13B, Chapter 304, 304.9-020(1), 304.12-020, 304.14-120, 304.17-380, 304.17A-095, 304.17A-240-304.17A-245, 304.17A.515, 304.17A-590, 304.17C, 20 U.S.C. 36B, 42 U.S.C. 300gg-5, 18022, 18031, 18042, 18054, 18082, 45 C.F.R. 155.706, 45 C.F.R. Part 153, 154.230, Parts 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Benefit Exchange has responsibility to administer the Kentucky Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the

programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to the certification of a qualified health plan or a qualified stand-alone dental plan to be offered on the Kentucky Health Benefit Exchange, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Participation Standards for Issuers Offering a Qualified Health Plan. In order to participate on KHBE, an issuer offering a QHP shall:

(1) Hold a certificate of authority that would permit the issuer to offer a health benefit plan and be in good standing with the Kentucky DOI;

(2) Be authorized by the division to participate on the KHBE;

(3) By February 1 of each year, submit Form KHBE-C1, Issuer Participation Intent Form, a nonbinding notice of intent to participate on KHBE during the next calendar year;

(4) Enter into a participation agreement with the division;

(5) Offer KHBE certified QHPs in the individual exchange or SHOP;

(6) Comply with benefit design standards as defined in 45 C.F.R. 156.20;

(7) Provide coverage of the:

(a) Essential health benefits; or

(b) Essential health benefits excluding pediatric dental essential health benefits, if a stand-alone pediatric dental essential health benefit is offered on the KHBE in accordance with 45 C.F.R. 155.1065;

(8) Comply with applicable standards established in 45 C.F.R. Part 153;

(9) Not discriminate, with respect to a QHP, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation;

(10) Comply with the non-discrimination requirements in 42 U.S.C. 300gg-5;

(11) Submit verification of issuer compliance with the requirements of 45 C.F.R. 156.340, including compliance of a delegated and downstream entity;

(12) Submit via SERFF:

(a) A quality improvement strategy plan in compliance with 45 C.F.R. 156.200(b)(5) and 45 C.F.R. 156.1130; and

(b) An attestation that the issuer shall comply with the quality requirements identified in 45 C.F.R. 156.200(b)(5) including:

1. Collection, disclosure, and report of information related to health care quality and outcomes in year two (2) of offering QHPs on the KHBE and annually thereafter; and

2. Implementation of an enrollee satisfaction survey in year two (2) of offering QHPs on the KHBE and annually thereafter;

(13) Comply with the provisions of 45 C.F.R. 156.210;

(14) For the individual exchange, offer at least a:

(a) QHP with a silver metal level of coverage;

(b) QHP with a gold metal level of coverage; and

(c) Child-only plan;

(15) For SHOP, offer at least a:

(a) QHP with a silver metal level of coverage; and

(b) QHP with a gold metal level of coverage;

(16) Make its provider directory for a QHP available:

(a) To a potential enrollee in hard copy upon request; and

(b) In accordance with 45 C.F.R. 156.230;

(17) If participating in the small group market, comply with KHBE processes, procedures, and requirements established in accordance with 45 C.F.R. 155.706 and 900 KAR 10:120 for the small group;

(18) Allow a registered participating agent to enroll qualified individuals on KHBE in accordance with the requirements of 900 KAR 10:125;

(19)(a) Offer a QHP in a statewide service area; or

(b) Offer a QHP in a service area less than statewide if:

1. The issuer's service area includes one (1) or more counties;

2. The issuer's service area is approved by the DOI; and

3. The issuer's service area is established in a nondiscriminatory manner with regard to:

- a. Race;
- b. Ethnicity;
- c. Language;
- d. Health status of an individual in a service area; or
- e. A factor that excludes a high utilizing, high cost, or medically-underserved population;

(20) Comply with the requirements of KRS 304.12-020, 304.14-120, 304.17-380, 304.17A-095, 304.17A-240-304.17A-245, 304.17A.515, 304.17A-590, and KRS Chapter 304;

(21) Have the option to offer QHPs to include benefits in excess of the essential health benefits if the issuer also offers at least one (1) QHP on the exchange at the same metal level of coverage that is limited to the essential health benefits; and

(22) Have the option to offer a catastrophic plan on the individual exchange.

Section 2. QHP Rate and Benefit Information.

(1) A QHP issuer shall:

(a) Comply with the provisions of 45 C.F.R. 156.210 and KRS 304.17A-095;

(b) Submit to DOI through the SERFF system:

1. Form filings in compliance with KRS 304.14-120;

2. Rate filings in compliance with KRS 304.17A-095; and

3. Plan management data templates; and

(c) 1. Receive approval from DOI for a rate filing prior to implementation of the approved rate; and

2. For a rate increase that meets the criteria in 45 C.F.R. 154.230, post the justification prominently on the QHP issuer's Web site.

(2) A CO-OP, multi-state plan, and a qualified SADP shall comply with the requirements established in subsection (1) of this section.

(3) A QHP issuer shall comply with the maintenance of records standards pursuant to 45 C.F.R. 156.705.

(4) To be certified as a QHP, a health plan shall provide coverage of the:

(a) Essential health benefits; or

(b) Essential health benefits excluding pediatric dental benefits if there is at least one (1) SADP offered in each county through the KHBE.

Section 3. QHP Certification Timeframes.

(1) The division shall take final action on a request for certification no later than twenty-five (25) calendar days prior to the start of the annual open enrollment period for the following plan year.

(2) A QHP not certified by twenty-five (25) calendar days prior to the start of the annual open enrollment period shall not be offered on the KHBE at any time during the following calendar year.

Section 4. Transparency in Coverage.

(1) A QHP issuer shall provide the following information to the KHBE in accordance with the standards established in subsection (2) of this section:

(a) Data as identified in 45 C.F.R. 155.1050(a), 156.220, and 156.230;

(b) An SBC written in English for each CSR level in a QHP with the exception of zero cost sharing level for an Indian;

(c) An SBC written in Spanish for each CSR level in a QHP with the exception of zero cost sharing level for an Indian, with verification that the Spanish language version is a certified translation of the English version;

(d) If the plan includes a health reimbursement account, flexible spending account, or health savings account, a spending account fact sheet written in English for each CSR level in a QHP consistent with the requirements in KRS 304.12-020 and 806 KAR 12:010;

(e) If the plan includes a health reimbursement account, flexible spending account, or health savings account, a spending account fact sheet written in Spanish for each CSR level in a QHP with verification that the Spanish language version is a certified translation of the English version; and

(f) Information on patient responsibility for out-of-network coverage.

(2) A QHP issuer shall:

(a) Submit in an accurate and timely manner, to be determined by HHS, the information established in subsection (1)(a) and (f) of this section to the KHBE;

(b) Provide public access to the information established in subsection (1) of this section;

(c) Provide the items established in subsection (1)(b) and (d) of this section to KHBE within five (5) calendar days of the date DOI has approved rate and form filings in SERFF; and

(d) Provide the items established in subsection (1)(c) and (e) of this section to KHBE within fourteen (14) calendar days of the date KHBE has approved the items established in paragraph (c) of this subsection.

(3) A QHP issuer shall ensure that the information submitted under subsection (1) of this section is provided in plain language as the term is defined by 45 C.F.R. 155.20.

(4)(a) A QHP issuer shall make available, in a timely manner, information about the amount of enrollee cost sharing under the enrollee's plan or coverage relating to provision of a specific item or service by a participating provider upon the request of the enrollee.

(b) The information shall be made available to an enrollee through:

1. The internet; and

2. Other means if the enrollee does not have access to the internet.

(5) A QHP issuer may provide the following information to KHBE in accordance with the standards established by subsection (2) of this section:

(a) An SBC written in English for each zero cost sharing level for an Indian in a QHP; and

(b) An SBC written in Spanish for each zero cost sharing level for an Indian in a QHP, with verification that the Spanish language version is a certified translation of the English version.

Section 5. Marketing and Benefit Design of QHPs. A QHP issuer and its officials, employees, agents, and representatives shall:

(1) Comply with issuer marketing practices provided under KRS Chapter 304.17A and 806 KAR 12:010; and

(2) Not employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with complex health care needs in QHPs.

Section 6. Network Adequacy Standards.

(1) A QHP issuer shall ensure that the provider network of a QHP:

(a) Is available to all enrollees within the QHP service area;

(b) Includes essential community providers in the QHP provider network in accordance with 45 C.F.R. 156.235 and meets the network adequacy standards for essential community providers as established in Section 7 of this administrative regulation;

(c) Maintains a network that is sufficient in number and types of providers, including providers that specialize in mental health and substance use disorder services, to assure that all services will be provided in a timely manner; and

(d)1. If a managed care plan, meets the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515; or

2. If not a managed care plan, meets the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515.

(2) A QHP issuer shall make its provider directory for a QHP available:

(a) To the KHBE for online publication;

(b) To potential enrollees in hard copy upon request; and

(c) In accordance with KRS 304.17A-590.

(3) A QHP issuer shall identify in the QHP provider directory a provider that is not accepting new patients.

Section 7. Network Adequacy Standards for Essential Community Providers. A QHP issuer shall:

(1)(a) Demonstrate a provider network, which includes at least the minimum percentage of available essential community providers in the QHP service area who participate in the issuer's provider network as required by 45 C.F.R. 156.235(a)(2)(i); and

(b) Offer a contract to:

1. At least one (1) essential community provider in each essential community provider category in each county in the service area where an essential community provider in that category is available; and

2. Available Indian health service providers in the service area; or

(2) If unable to comply with the requirements in subsection (1) of this section, submit a supplementary response via SERFF.

Section 8. Health Plan Notices. A QHP issuer shall provide notices to enrollees pursuant to standards established in 45 C.F.R. 155.230.

Section 9. Consistency of Premium Rates Inside and Outside the KHBE for the Same QHP. A QHP issuer shall charge the same premium rate without regard to whether the plan is offered:

(1) Through the KHBE;

(2) By an issuer outside the KHBE; or

(3) Through a participating agent.

Section 10. Enrollment Periods for Qualified Individuals.

(1) A QHP issuer participating in the individual market shall accept an enrollment during the open enrollment period or SEP for a qualified individual participating in the individual market with effective dates of coverage established by the division in accordance with 45 C.F.R. 155.410(f)(2) and 45 C.F.R. 155.420.

(2) A QHP issuer shall notify a qualified individual of the effective date of coverage.

(3) Except for renewal transactions prior to open enrollment, premium invoices shall be generated to a qualified individual within five (5) business days from receipt of KHBE enrollment transactions.

(4) A QHP issuer shall allow a qualified individual a minimum of thirty (30) days from the date of the initial invoice to submit premium payment before coverage can be cancelled.

(5) A QHP issuer shall allow a qualified individual a minimum of thirty (30) days from the date of a corrected invoice to submit premium payment before coverage can be terminated.

(6) Notwithstanding the requirements of this section, coverage shall not be effective until premium payment is received by the issuer.

(7) The issuer shall provide proof of coverage, including insurance identification cards, to enrollees within ten (10) calendar days of receipt of initial premium payment for ninety-nine (99) percent of enrollments.

Section 11. Enrollment Process for Qualified Individuals. A QHP issuer shall process enrollment of an individual in accordance with this section.

(1) A QHP issuer participating in the individual market shall enroll a qualified individual if the KHBE:

(a) Notifies the QHP issuer that the individual is a qualified individual; and

(b) Transmits information to the QHP issuer in accordance with 45 C.F.R. 155.400(a).

(2) If an applicant initiates enrollment directly with the QHP issuer for enrollment in a plan offered through the KHBE, the QHP issuer shall either:

(a) Direct the individual to file an application with the KHBE in accordance with 45 C.F.R. 155.310; or

(b) Ensure the applicant received an eligibility determination for coverage through the KHBE.

(3) A QHP issuer shall accept enrollment information in accordance with the privacy and security requirements pursuant to 45 C.F.R. 155.260 in an electronic format that meets the requirements pursuant to 45 C.F.R. 155.270.

(4) A QHP issuer shall follow the premium payment process in accordance with 45 C.F.R. 155.240.

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(5) A QHP issuer shall provide new enrollees with an enrollment information package that complies with the accessibility and readability requirements established by 45 C.F.R. 155.230(b).

(6) A QHP issuer shall reconcile enrollment files with the KHBE no less than once a month in accordance with 45 C.F.R. 155.400(d).

(7) A QHP issuer shall acknowledge receipt of enrollment information transmitted from the KHBE in accordance with 45 C.F.R. 155.400(b)(2).

Section 12. Termination or Cancellation of Coverage for Qualified Individuals.

(1) A QHP issuer may terminate coverage of an enrollee in accordance with 45 C.F.R. 155.430(b)(2).

(2) If an enrollee's coverage in a QHP is terminated by the issuer, the QHP issuer shall:

(a) Provide the enrollee with a notice of termination of coverage that includes the reason for termination at least thirty (30) days prior to the final day of coverage, in accordance with the effective date established pursuant to 45 C.F.R. 155.430(d);

(b) If the termination is the result of death or termination by the issuer for non-payment of premium as established in subsections (3) through (8) of this section, provide the enrollee with a notice of termination of coverage within at least thirty (30) days of the action to terminate that includes the reason for termination, in accordance with the effective date established pursuant to 45 C.F.R. 155.430(d);

(c) Notify the KHBE of the termination effective date and reason for termination; and

(d) Comply with the requirements of KRS 304.17A-240 to 304.17A-245.

(3) Termination of coverage of enrollees due to non-payment of premium in accordance with 45 C.F.R. 155.430(b)(2)(ii) shall:

(a) Include the grace period for enrollees receiving APTC as established in 45 C.F.R. 156.270(d); and

(b) Be applied uniformly to enrollees in similar circumstances.

(4) Prior to termination of coverage, a QHP issuer shall provide a grace period of three (3) consecutive months if an enrollee receiving APTC has previously paid at least one (1) full month's premium during the benefit year.

(5) During the grace period, the QHP issuer:

(a)1. Shall pay claims for services provided to the enrollee in the first month of the grace period; and

2. May suspend payment of claims for services provided to the enrollee in the second and third months of the grace period;

(b) Shall notify the KHBE of the non-payment of the premium due; and

(c) Shall notify providers of the possibility for denied claims for services provided to an enrollee in the second and third months of the grace period.

(6) For the three (3) month grace period established in subsection (4) of this section, a QHP issuer shall:

(a) Continue to collect APTC on behalf of the enrollee from the U.S. Department of the Treasury; and

(b) Return APTC paid on behalf of the enrollee for the second and third months of the grace period if the enrollee exhausts the grace period as established in subsection (8) of this section.

(7) If an enrollee is delinquent on premium payment, the QHP issuer shall provide the enrollee with a notice of the payment delinquency.

(8) If an enrollee receiving APTC exhausts the three (3) month grace period in subsection (4) of this section without paying the outstanding premiums, the QHP issuer shall terminate the enrollee's coverage on the effective date of termination established in 45 C.F.R. 155.430(d)(4).

(9) A QHP issuer shall maintain records pursuant to 45 C.F.R. 155.430(c).

(10) A QHP issuer shall comply with the termination of coverage effective dates as established in 45 C.F.R. 155.430(d).

(11) A QHP issuer may cancel coverage of an enrollee in accordance with 45 C.F.R. 155.430(b)(2) and (e).

(12) If an enrollee's coverage in a QHP is cancelled by the issuer for any reason, the QHP issuer shall:

(a) Provide the enrollee with a notice of cancellation of coverage that includes the reason for cancellation within at least thirty (30) days of the action to cancel coverage, in accordance with the effective date established pursuant to 45 C.F.R. 155.430(d);

(b) Notify the KHBE of the cancellation effective date and reason for cancellation; and

(c) Comply with the requirements of KRS 304.17A-240 to 304.17A-245.

(13) Cancellation of coverage of enrollees due to non-payment of premium in accordance with 45 C.F.R. 155.430(b)(2)(ii) shall be applied uniformly to enrollees in similar circumstances.

(14) A QHP issuer shall comply with the cancellation of coverage effective dates as established in 45 C.F.R. 155.430(d).

(15) If coverage of an enrollee is terminated or cancelled by the KHBE for any reason, the QHP issuer shall provide the enrollee a notice of the termination or cancellation within fifteen (15) days of processing the termination or cancellation transaction from the KHBE or upon the expiration of the grace period, whichever occurs first.

Section 13. Accreditation of QHP Issuers.

(1) A QHP issuer shall:

(a) Be accredited on the basis of local performance of a QHP by an accrediting entity recognized by HHS in categories identified by 45 C.F.R. 156.275(a)(1); and

(b) Pursuant to 45 C.F.R. 156.275(a)(2), authorize the accrediting entity that accredits the QHP issuer to release to the KHBE and HHS:

1. A copy of the most recent accreditation survey; and

2. Accreditation survey-related information that HHS may require, including corrective action plans and summaries of findings.

(2) A QHP issuer shall be accredited prior to the fourth year of QHP certification and in every subsequent year of certification thereafter in accordance with the requirements and timeline identified under 45 C.F.R. 155.1045.

(3) A QHP issuer that has not received accreditation shall submit an attestation to the division that the issuer shall obtain accreditation in accordance with subsection (1)(a) of this section.

(4) The QHP issuer shall maintain accreditation so long as the QHP issuer offers QHPs.

Section 14. Decertification of QHPs.

(1) If a QHP is decertified by the division pursuant to 45 C.F.R. 155.1080 or withdrawn by the issuer after certification, the QHP issuer shall terminate coverage of enrollees only after:

(a) The KHBE has provided notification as required by 45 C.F.R. 155.1080(e);

(b) Enrollees have an opportunity to enroll in other coverage; and

(c) The QHP issuer has complied with the requirements of KRS 304.17A-240 to 304.17A-245, as applicable.

(2) If a QHP issuer fails to meet ongoing compliance requirements of Section 18 of this administrative regulation, the division may require the issuer to:

(a) Submit a corrective action plan to address deficiencies to ongoing compliance requirements within thirty (30) days of notification of the deficiency; and

(b) Submit evidence of compliance with the corrective action plan within the timeframes established in the division approved corrective plan.

(3) If the division finds that the QHP issuer failed to meet the requirements of subsection (2) of this section, the division may implement a prohibition against new enrollments on KHBE for the QHP issuer and market segment out of compliance or may decertify all plans offered by the QHP issuer within the market segment.

Section 15. General Requirements for a Stand-alone Dental Plan.

(1) In order for a dental insurer to participate in the KHBE and offer a stand-alone dental plan, the dental insurer shall:

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(a) Hold a certificate of authority that would permit the issuer to offer dental plans and be in good standing with the DOI;

(b) Be authorized by the division to participate on the KHBE;

(c) By February 1 of each year, submit Form KHBE-C1, Issuer Participation Intent Form, a nonbinding notice of intent to participate on KHBE during the next calendar year;

(d) Enter into a participation agreement with the division;

(e) Offer a dental plan certified on the KHBE in accordance with this administrative regulation in the individual exchange or SHOP that shall comply with the requirements of KRS Chapter 304 Subtitle 17C;

(f) Submit to DOI through the SERFF system:

1. Form filings in compliance with KRS Chapter 304;
2. Rate filings in compliance with KRS 304.17-380; and
3. Dental plan management data templates;

(g) Offer a SADP that shall:

1. Provide the pediatric dental essential health benefits required by 42 U.S.C. 18022(b)(1)(J) for individuals up to twenty-one (21) years of age; and

2. Have an annual limitation on cost sharing for a SADP covering the pediatric dental essential health benefits at or below the limits permitted by 45 C.F.R. 156.150;

(h) Comply with the:

1. Provider network adequacy requirements identified by KRS 304.17C-040 and maintain a network that is sufficient in number and types of dental providers to assure that all dental services will be accessible without unreasonable delay in accordance with 45 C.F.R. 156.230;

2. Requirements for a SADP referenced in 45 C.F.R. 156 Subpart E; and

3. Essential community provider requirements in 45 C.F.R. 156.235;

(i) Not discriminate, with respect to a pediatric dental plan, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation; and

(j) Make its provider directory for a SADP available:

1. To the KHBE for online publication;
2. To potential enrollees in hard copy upon request; and
3. In accordance with KRS 304.17A-590.

(2) A dental insurer offering a stand-alone dental plan participating in the KHBE shall provide the following information to the division on the KHBE:

(a) Statement of dental coverage that is:

1. Written in English consistent with the requirements in KRS 304.12-020 and 806 KAR 12:010; and

2. Submitted within five (5) calendar days of the date DOI has approved rate and form filings in SERFF; and

(b) Statement of dental coverage that is:

1. Written in Spanish with verification that the Spanish language version is a certified translation of the English version; and

2. Submitted within fourteen (14) calendar days of the date KHBE has approved the item described in paragraph (a) of this subsection.

Section 16. Enforcement by DOI. The DOI shall be responsible for enforcing the requirements of KRS Chapter 304 and any administrative regulations promulgated thereunder against any issuer.

Section 17. Timeframes for Transactions.

(1) A QHP issuer shall generate a required acknowledgement and process all KHBE initiated transactions within forty-eight (48) hours of receipt of a complete electronic transaction from the KHBE for ninety-five (95) percent of enrollments.

(2) A QHP issuer shall provide effectuation transactions to the KHBE within seventy-two (72) hours of receipt of the initial premium payment and issuer initiated cancellation and termination transactions within forty-eight (48) hours of the cancellation or termination of coverage for ninety-five (95) percent of cancellations and terminations.

Section 18. On-going Compliance. The division shall be

responsible for enforcing the requirements referenced in 45 C.F.R. 155.1010(a)(2).

Section 19. Issuer Appeals.

(1) An issuer may appeal the division's decision to:

- (a) Deny certification of a QHP;
- (b) Implement a prohibition against new enrollments by a QHP issuer in a market segment; or
- (c) Decertify a QHP.

(2) An issuer appeal identified in subsection (1) of this section shall be made to the division in accordance with KRS Chapter 13B.

Section 20. Incorporation by Reference.

(1) Form KHBE-C1, "Issuer Participation Intent Form", Rev. March, 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Health Benefit Exchange, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or at www.khbe.ky.gov.

ROBERT PUTT, Executive Director

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 12, 2021

FILED WITH LRC: March 15, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 24, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 17, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Advisor, 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: Melea Rivera and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to the certification of a qualified health plan or a qualified stand-alone dental plan to be offered on the Kentucky Health Benefit Exchange

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform issuers of the requirements for certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that issuers are aware of the requirements for certification of a health plan as a qualified health plan or dental plan as a stand-alone dental plan to be offered on the Kentucky Health Benefit Exchange as required by 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange to comply with the statute

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation

(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 government affected by this administrative regulation: This administrative regulation will affect approximately 10 issuers that may request certification of a health plan as a qualified health plan or certification of a dental plan as a stand-alone dental plan to be offered on the Kentucky Health Benefit Exchange

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will submit information electronically through the SERFF system related to rate and form filings to the DOI for review by DOI and KHBE.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$1,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each issuer that may request certification of a health plan as a qualified health plan or certification of a dental plan as a stand-alone dental plan to be offered on the Kentucky Health Benefit Exchange by providing detailed instructions regarding certification of Qualified Health Plans.

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

(a) Initially: The estimated cost to implement a state-based exchange will be \$5,000,000 to the state but will result in significant savings to Kentuckians through reductions in health insurance premiums.

(b) On a continuing basis: The estimated cost will be \$2,000,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Division of Health Benefit Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 U.S.C. 36B, 42 U.S.C. 300gg-5, 18022, 18031, 18042, 18054, 18082, 45 C.F.R. 155.706,45 C.F.R. Part 153,

154.230, Parts 155, 156.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the certification of a qualified health plan to be offered on the Kentucky Health Benefit Exchange, pursuant to, and in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a QHP in Kentucky. An Exchange must make qualified health plans available to qualified individuals and qualified employers. At a minimum, an Exchange must implement procedures for the certification, recertification, and decertification of health plans as qualified health plans. The Affordable Care Act allows for Exchanges to certify health plans as qualified health plans. This certification may be done if: The health plan meets the rules for certification by the U. S. Department of Health and Human Services; and The Exchange determines that making such health plan available through the Exchange is in the interests of qualified individuals and qualified employers in the state or states in which the Exchange operates. The Exchange must require health plans seeking certification as qualified health plans to submit a justification for any premium increase prior to implementation of the increase. These plans must prominently post such information on their websites.

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. This administrative regulation does not impose stricter requirements than those required by the federal mandate

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 affects the Office of Health Data and Analytics, Division of Health Benefit Exchange within the Cabinet for Health and Family Services and the DOI within the Public Protection and Regulation Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 36B, 42 U.S.C. 300gg-5, 18022, 18031, 18042, 18054, 18082, 45 C.F.R. 155.706,45 C.F.R. Part 153, 154.230, Parts 155, 156.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This 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.

(c) How much will it cost to administer this program for the first year? Approximately \$2,000,000.

(d) How much will it cost to administer this program for

subsequent years? Approximately \$2,000,000.

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

Revenues (+/-):

Expenditures (+/-): \$2,000,000

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Health Benefit Exchange
(New Administrative Regulation)**

900 KAR 10:120. KHBE Eligibility and Enrollment in a Qualified Health Plan, SHOP, and SHOP Formal Resolution Process.

RELATES TO: KRS 304.14-110, 304.17A-125, 304.17A-243, 304.17A-245, Chapter 304, 26 U.S.C. 5000A, 9831, 6011, 6012, 42 U.S.C. 18031, 26 C.F.R. 1.36B-2, 1.36B-3, 54.9801-6, 54.9802-4, 29 C.F.R. 2590.702-2, 42 C.F.R. 435.320, 45 C.F.R. 146.123, 147.104, 147.128, Parts 155, 156.

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Benefit Exchange has responsibility to administer the Kentucky Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market, the operation of a Small Business Health Options Program, and the formal review process related to SHOP on the Kentucky Health Benefit Exchange pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Eligibility and Enrollment.

(1) An applicant shall be eligible to enroll in a QHP through the KHBE if the applicant:

(a) 1. Is a citizen or national of the United States;

2. Is a non-citizen who is lawfully present in the United States and is reasonably expected to become a citizen or national; or

3. Is a non-citizen who is lawfully present for the entire period for which enrollment is sought;

(b) Except for an incarceration pending a disposition of a charge, is not incarcerated; and

(c) Meets a residency requirement in 45 C.F.R. 155.305(a)(3).

(2) An applicant may apply for a determination of eligibility at any time during a year; however, the applicant shall only enroll during open enrollment or SEPs.

(3) An applicant determined eligible for enrollment in a QHP as set forth in subsection (1) of this section shall be eligible to enroll in a QHP during:

(a) An open enrollment period as established in Section 5(2) of this administrative regulation; or

(b) A SEP as established in Sections 5(4) and 6 of this administrative regulation.

(4) An applicant shall attest to whether or not information affecting the applicant's eligibility has changed since the most recent eligibility determination if the applicant:

(a) Was determined eligible to enroll in a QHP but:

1. Did not select a QHP within the applicable enrollment period as set forth in Section 5 or 6 of this administrative regulation; or

2. Was not eligible for an enrollment period; and

(b) Seeks a new enrollment period prior to the date on which the applicant's eligibility is redetermined as established in Section 8 of this administrative regulation.

(5) An applicant shall submit an application for enrollment in a

QHP:

(a) Via the website;

(b) By telephone;

(c) By mail; or

(d) In person.

(6)(a) An applicant who has a Social Security number shall provide the number to the KHBE.

(b) An individual who is not seeking coverage for himself or herself shall not provide a Social Security number, except as established by Section 2(8) of this administrative regulation.

(7) In accordance with 45 C.F.R. 155.310(a)(2), an individual shall not provide information regarding citizenship, status as a national, or immigration status for an individual who is not seeking coverage for himself or herself.

(8)(a) Except as established by paragraph (b) of this subsection, an applicant who requests an eligibility determination for an insurance affordability program shall have an eligibility determination for all insurance affordability programs.

(b) An applicant who requests an eligibility determination for a QHP only shall not have an eligibility determination for an insurance affordability program.

(9) An applicant shall not provide information beyond the minimum amount necessary to determine eligibility and enrollment through the KHBE.

Section 2. Eligibility Standards for Advanced Payments of the Premium Tax Credit.

(1) A tax filer shall be eligible for APTC if:

(a) The tax filer is expected to have a household income as prescribed in 45 C.F.R. 155.305(f)(1)(i) for the benefit year for which coverage is requested; and

(b) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year:

1. Meets the requirements for eligibility for enrollment in a QHP through the KHBE as established by Section 1 of this administrative regulation; and

2. Is not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. 1.36B-2(a)(2) and (c).

(2) A tax filer who is a non-citizen and lawfully present and ineligible for Medicaid for reason of immigration status shall be eligible for APTC if:

(a) The tax filer meets the requirement in subsection (1)(b) of this section;

(b) The tax filer is expected to have a household income of less than one hundred (100) percent of the FPL for the benefit year for which coverage is requested; and

(c) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year is:

1. A non-citizen who is lawfully present; and

2. Not eligible for Medicaid for reason of immigration status.

(3) A tax filer shall attest that one (1) or more applicants for whom the tax filer attests that a personal exemption deduction for the benefit year shall be claimed is enrolled in a QHP that is not a catastrophic plan.

(4) A tax filer shall not be eligible for APTC if HHS notifies the KHBE that APTCs were made on behalf of the tax filer or tax filer's spouse for a year in accordance with 45 C.F.R. 155.305(f)(4).

(5) An APTC amount shall be:

(a) Calculated in accordance with 26 C.F.R. 1.36B-3; and

(b) Allocated between QHPs and stand-alone dental policies in accordance with 45 C.F.R. 155.340(e).

(6) An applicant for APTC may accept less than the full amount of APTC for which the applicant is determined eligible.

(7) An APTC shall be authorized by the KHBE on behalf of a tax filer only if the KHBE obtains necessary attestations from the tax filer that:

(a) The tax filer shall file an income tax return for the benefit year in accordance with 26 U.S.C. 6011 and 6012;

(b) If the tax filer is married, a joint tax return shall be filed for the benefit year;

(c) Another taxpayer shall not be able to claim the tax filer as a dependent for the benefit year; and

(d) The tax filer shall claim a personal exemption deduction on the tax filer's return for the applicants identified as members of the tax filer's family, including the tax filer and the spouse of the tax filer, in accordance with 45 C.F.R. 155.305(f)(4).

(8) An application filer who is not an applicant shall provide the Social Security number of a tax filer only if the applicant attests that the tax filer:

(a) Has a Social Security number; and

(b) Filed a tax return for the year for which tax data would be utilized for verification of household income and family size.

(9) The effective date for APTC shall be:

(a) For an initial eligibility determination, in accordance with the dates established by Section 5(1), (2), (3) and (4), as applicable; and

(b) For a redetermination, in accordance with the dates established by 45 C.F.R. 155.330(f) and 155.335(i), as applicable.

(10) An employer shall be notified of an employee's eligibility for APTC in accordance with 45 C.F.R. 155.310 (h).

Section 3. Eligibility Standards for Cost Sharing Reductions.

(1) An applicant shall be eligible for CSRs if the applicant:

(a) Meets the eligibility requirements for enrollment in a QHP as set forth in Section 1 of this administrative regulation;

(b) Meets the requirements for APTC as set forth in Section 2 of this administrative regulation;

(c) Is expected to have a household income that does not exceed the amount established by 45 C.F.R. 155.305(g)(1)(i)(C) for the benefit year for which coverage is requested; and

(d) Except for an enrollee who is an Indian, enrolls in a silver level QHP through the KHBE.

(2) An eligibility determination for CSRs shall be based on the categories as described in 45 C.F.R. 155.305(g)(2).

(3) If two (2) or more individuals enrolled in the individual market under a single policy would be eligible for different cost sharing amounts if enrolled in separate policies, the individuals under the single policy shall be deemed by the KHBE to be collectively eligible only for the last category listed in 45 C.F.R. 155.305(g)(3) for which all the individuals covered by the policy would be eligible.

(4) The effective date for CSRs shall be:

(a) For an initial eligibility determination, in accordance with the dates established by Section 5(1), (2), (3), and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates established by 45 C.F.R. 155.330(f) and 45 C.F.R. 155.335(i), as applicable.

(5) An employer shall be notified of an employee's eligibility for CSRs in accordance with 45 C.F.R. 155.310(h).

Section 4. Verification Processes.

(1) Verification of eligibility for an applicant seeking enrollment in a QHP shall be performed in accordance with:

(a) 45 C.F.R. 155.315; and

(b) Kentucky QHP/APTC Eligibility Verification Plan.

(2) Verification of eligibility for an applicant or tax filer who requests an eligibility determination for an insurance affordability program shall be in accordance with:

(a) 45 C.F.R. 155.320; and

(b) Kentucky QHP/APTC Eligibility Verification Plan.

Section 5. QHP Enrollment Periods and Effective Dates of Coverage.

(1) A qualified individual shall enroll in a QHP or an enrollee may change from one (1) QHP to another QHP during an open enrollment period.

(2) The timeframe for an open enrollment period shall be established by the Secretary of the Cabinet for Health and Family Services.

(3) A qualified individual or enrollee who selects a QHP during an open enrollment period shall have an effective date of coverage of:

(a) January 1, if a QHP selection is made on or before December 15 of the previous year;

(b) If after December 15, the first day of the following month, if a QHP selection is made between the first and the fifteenth of a month; or

(c) If after December 15, the first day of the second following month, if a QHP selection is made between the sixteenth and last day of a month.

(4)(a) A qualified individual shall enroll in a QHP or an enrollee may change from one (1) QHP to another QHP during a SEP as established by Section 6 of this administrative regulation.

(b) A qualified individual or an enrollee who selects a QHP during a SEP shall have an effective date of coverage as set forth in Section 6 of this administrative regulation.

(5) An initial enrollment in a QHP shall not be effective until the first month's premium is received by the QHP issuer.

Section 6. Special Enrollment Periods.

(1) Except as established by subsection (3) of this section, a qualified individual or enrollee shall have sixty (60) days from the date of a qualifying event as set forth in subsection (2) of this section to select a QHP.

(2) A qualified individual may enroll in a QHP or an enrollee or a dependent of an enrollee may change QHPs during a SEP if:

(a) The qualified individual or a dependent of the qualified individual:

1. Loses minimum essential coverage;

2. Is enrolled in any non-calendar year group health plan, individual health insurance coverage, or qualified small employer reimbursement arrangement even if the qualified individual or his or her dependent has the option to renew or reenroll in such coverage;

3. Loses pregnancy-related coverage described in 45 C.F.R. 155.420(d)(1)(iii);

4. Loses medically needy coverage as described under 42 C.F.R. 435.320 only once per calendar year; or

5. Is enrolled in coverage under 26 C.F.R. 54.9801– 6(a)(3)(i) through (iii) for which an employer is paying all or part of the premiums and the employer ceases its contributions;

(b) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, placement in foster care, a child support order, or other court order;

(c) The qualified individual, or a dependent of the qualified individual, who was not previously a citizen, national, or lawfully present gains status as a citizen, national, or lawfully present;

(d) The enrollee is determined newly eligible or newly ineligible for APTC;

(e) The enrollee or a dependent of the enrollee becomes newly eligible for CSRs and is not enrolled in a silver-level QHP;

(f) The enrollee or a dependent of the enrollee becomes newly ineligible for CSRs and is enrolled in a silver-level QHP;

(g) The qualified individual or a dependent of the qualified individual who is enrolled in qualifying coverage in an employer-sponsored plan is determined newly eligible for APTC in part on a finding that the individual will no longer be eligible for qualifying coverage in the employer-sponsored plan in the next sixty (60) days and is allowed to terminate existing coverage;

(h) The qualified individual or enrollee or a dependent of the qualified individual or the enrollee:

1. Gains access to new QHPs as a result of a permanent move; and

2. Had MEC for one (1) of more days during the sixty (60) days preceding the date of the permanent move;

(i) The qualified individual is an Indian who may enroll in a QHP or change from one (1) QHP to another QHP one (1) time per month;

(j) The qualified individual is or becomes a dependent of an Indian and is enrolled or is enrolling in a QHP on the same application as the Indian, and may change from one (1) QHP to another QHP one (1) time per month, at the same time as the Indian;

(k) The qualified individual or enrollee or a dependent of the

qualified individual or enrollee is no longer incarcerated;

(l) The qualified individual or enrollee, or a dependent of the qualified individual or enrollee:

1. Gains access to an individual HRA; or
2. Is newly provided a QSEHRA arrangement;

(m) The plan in which the enrollee or a dependent of the enrollee is enrolled is decertified by the division;

(n) The enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation;

(o) The enrollee or a dependent of the enrollee dies;

(p) The qualified individual or enrollee:

1. Is a victim of domestic abuse or spousal abandonment as defined by 26 C.F.R. 1.36B-2, or a dependent of the qualified individual or enrollee, or an unmarried victim of domestic abuse or spousal abandonment residing within the same household as the qualified individual or enrollee;

2. Is enrolled in MEC; and

3. Sought to enroll in coverage separate from the perpetrator of abuse or abandonment;

(q) The qualified individual or enrollee:

1. Is a dependent of an individual described in paragraph (i) of this subsection;

2. Is on the same application as the individual described in paragraph (i) of this subsection; and

3. Enrolls at the same time as the individual described in subsection (2)(i) of this section;

(r) The qualified individual or enrollee:

1. Applies for coverage during:

- a. An annual open enrollment period; or
- b. If there is a qualifying event, a SEP; and

2. Is determined ineligible for Medicaid or KCHIP:

- a. After open enrollment has ended; or
- b. More than sixty (60) days after the qualifying event;

(s) The qualified individual or dependent of the qualified individual enrolls or fails to enroll in a QHP due to an error, misrepresentation, or inaction of an officer, employee, or representative of the KHBE;

(t) The enrollee or dependent of the enrollee demonstrates to the KHBE that the QHP in which the enrollee or the dependent of the enrollee is enrolled substantially violated a provision of its contract in relation to the enrollee or dependent;

(u) The qualified individual or enrollee, or a dependent of the qualified individual or enrollee, demonstrates to the KHBE that a material error related to a plan benefit, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a QHP through KHBE;

(v) The qualified individual:

1. a. Was previously ineligible for APTC because of a household income below 100 percent of the FPL; and

b. Was ineligible for Medicaid due to living in a non-Medicaid expansion state during the same timeframe; and either

2. a. Experiences a change in household income; or

b. Makes a permanent move to the commonwealth of Kentucky resulting in the individual becoming newly eligible for APTC;

(w) The qualified individual or a dependent of the qualified individual:

1. Experiences a decrease in household income;

2. Is newly determined eligible by the KHBE for APTC; and

3. Had MEC for one (1) or more days during the sixty (60) days preceding the date of the change in household income; or

(x) The qualified individual or a dependent of the qualified individual meets other exceptional circumstances as defined by 45 C.F.R. 155.420(d)(9).

(3) The date of the triggering event for the loss of minimum essential coverage shall be:

(a) For a decertification of a QHP as set forth in 900 KAR 10:115, the date of the notice of decertification;

(b) For an event described in subsection (2)(a)2. of this section, the last day of the plan year;

(c) For an event described in subsection (2)(a)5. of this section, the last day of the period for which COBRA continuation coverage is paid for, in part or in full, by an employer; or

(d) For all other cases, the date the qualified individual or

dependent of the qualified individual loses eligibility for minimum essential coverage.

(4) Loss of minimum essential coverage shall include those circumstances described in 26 C.F.R. 54.9801-6(a)(3)(i) through (iii).

(5) Loss of minimum essential coverage shall not include termination or loss due to:

(a) Failure to pay premiums on a timely basis; or

(b) A situation allowing for a rescission as established by 45 C.F.R. 147.128.

(6) Except as established by subsection (7), (8), or (9) of this section, a qualified individual or enrollee who selects a QHP during a SEP shall have an effective date of coverage of:

(a) The first day of the following month for a selection made between the first and the fifteenth day of any month; or

(b) The first day of the second following month for a selection made between the sixteenth and last day of any month.

(7) A qualified individual or enrollee who selects a QHP:

(a) For a birth, adoption, placement for an adoption, placement in foster care, or child support or other court order, shall have an effective date of coverage of either:

1. The date of the birth, adoption, placement for adoption, placement in foster care, or effective date of court order; or

2. If the qualified individual or enrollee elects:

a. The first of the month following plan selection; or

b. In accordance with subsection (6) of this section;

(b) For a marriage, shall have an effective date of coverage of the first day of the month following plan selection;

(c) For a loss of coverage as described in subsection (2)(a) of this section, for a gain of access to a new QHP as a result of a permanent move as described in subsection (2)(h) of this section, or for being newly eligible for enrollment in a QHP as described in subsection (2)(c) or (2)(k) of this section, if:

1. The plan selection is made on or before the day of the triggering event, shall have a coverage effective date of the first day of the month following the triggering event; or

2. The plan selection is made after the date of the triggering event, shall have a coverage effective date in accordance with this subsection; or

(d) For a death as described in subsection (2)(o) of this section, shall have a coverage effective date:

1. Of the first day of the month following a plan selection; or

2. In accordance with paragraph (c) of this subsection.

(8) A qualified individual, enrollee, or dependent of the qualified individual or enrollee who selects a QHP as described in subsection (2)(g) shall have a coverage effective date:

(a) If the plan selection is made before the day of the triggering event:

1. On the first day of the month following the triggering event; or

2. If the triggering event is on the first day of a month, on the date of the triggering event; or

(b) If the plan selection is made on or after the day of the triggering event, on the first day of the month following plan selection.

(9) A qualified individual or enrollee who selects a QHP in accordance with subsection (2)(a)4.,(r), (s), (t), (u), or (v) of this section shall have a coverage effective date based on the circumstances of the SEP.

(10)(a) An individual described in subsection (2)(g) of this section may access a SEP sixty (60) days prior to the end of the individual's qualifying coverage in the employer-sponsored plan.

(b) An individual who accesses a SEP as set forth in paragraph (a) of this subsection shall not be eligible for APTCs until the end of the individual's qualifying coverage through the eligible employer-sponsored plan.

(11) If an existing enrollee becomes newly eligible for CSRs and is not enrolled in a silver plan, the enrollee may choose a silver plan.

(12) If an enrollee and a dependent of an enrollee become newly ineligible for CSRs and are enrolled in a silver-level QHP, the enrollee may change to a QHP one (1) metal level higher or lower.

(13) If an enrollee gains a dependent due to marriage, birth, adoption, foster care, or court order, the enrollee shall:

- (a) Not change plans; and
- (b) Either:

1. Add the new dependent to the enrollee's current enrollment;

or

2. Enroll the new dependent in a plan of any plan category.

(14) Except for the qualifying events established by subsection (2)(i), (l), (p), (u), and (v) of this section and the events described in subsections (11), (12), and (13) of this section:

(a) If an enrollee qualifies for a SEP, the enrollee may change to a QHP within the same level of coverage;

(b) If a dependent of an enrollee qualifies for a SEP and the enrollee does not also qualify for a SEP, the enrollee shall add the dependent to the enrollee's current QHP; or

(c) If a qualified individual who is not an enrollee qualifies for a SEP and has a dependent who is an enrollee who does not qualify for a SEP, the qualified individual shall be added to the dependent's current QHP.

(15) For a qualified individual, enrollee, or dependent described in subsection (2)(l) of this section, the triggering event shall be:

(a) The first day on which coverage for the qualified individual, enrollee, or dependent under the individual coverage HRA can take effect; or

(b) The first day on which coverage under the QSEHRA takes effect.

(16) A qualified individual, enrollee, or dependent described in subsection (2)(l) of this section shall:

(a) Qualify for a SEP regardless of whether they were previously offered or enrolled in an individual HRA or previously provided a QSEHRA, if:

1. The qualified individual, enrollee, or dependent is not enrolled in the individual coverage HRA; or

2. The qualified individual, enrollee, or dependent is not covered by the QSEHRA on the day immediately prior to the triggering event; and

(b)1. Have sixty (60) days before the triggering event to select a QHP; or

2. Have sixty (60) days before or after the triggering event if the HRA or QSEHRA was not required to provide the notice described in 45 C.F.R. 146.123(c)(6), 26 C.F.R. 54.9802-4(c)(6), and 29 C.F.R. 2590.702-2(c)(6) or 26 U.S.C. 9831(d)(4).

Section 7. Verifications for Special Enrollment Periods.

(1) KHBE shall conduct pre-enrollment verification of newly enrolling individuals as established by this section.

(2) A QHP enrollment for an individual subject to verification shall not be submitted to the issuer pending verification for a SEP.

(3) For an enrollment subject to verification as described in this section, a new enrollee shall have thirty (30) days from the date of plan selection to provide requested documentation.

(4) A qualifying individual described in Section 6(2)(h) of this administrative regulation shall provide proof of:

(a) A permanent move during the past sixty (60) days; and

(b) Either:

1. Having had minimum essential coverage for one (1) or more days during the sixty (60) days preceding the date of the qualifying event; or

2. Having:

a. Lived in a foreign county or in a US territory for one (1) or more days during the sixty (60) days preceding the qualifying event;

b. Lived in a service area where no qualified health plan was available through KHBE for 1 or more days during the sixty (60) days preceding the qualifying event or their most recent open enrollment or SEP; or

c. Status as an Indian.

(5) For a marriage, as described in Section 6(2)(b) of this administrative regulation, a qualified individual shall provide proof of marriage during the past sixty (60) days.

(6) Other than as described in subsections (4) and (5) of this section, a qualified individual described in Section 6(2)(b) of this

administrative regulation shall provide proof of:

(a) The qualifying event during the past sixty (60) days; and

(b) Either:

1. Having minimum essential coverage as described in Section 6(2)(a) of this administrative regulation for one (1) or more days during the sixty (60) days preceding the date of the qualifying event; or

2. Meeting the requirements in subsection (4)(b) of this section.

(7) For a loss of minimum essential coverage as described in Section 6(2)(a) of this administrative regulation, a qualified individual shall provide proof of coverage for one (1) or more days during the past sixty (60) days.

(8) SEP verification shall not impact an enrollee's effective date of coverage except as provided in 45 C.F.R. 155.400(e)(1)(iii).

Section 8. Eligibility Redetermination During a Benefit Year.

(1) Eligibility shall be redetermined for an enrollee during a benefit year if the KHBE receives and verifies:

(a) New information reported by an enrollee; or

(b) Updated information obtained in accordance with 45 C.F.R. 155.330(d).

(2) Except as established by subsection (3) of this section, an enrollee or an application filer, on behalf of an enrollee, shall report within thirty (30) days:

(a) A change related to an eligibility standard in Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Via a method described in Section 1(5) of this administrative regulation.

(3) An enrollee who did not request an eligibility determination for an insurance affordability program shall not report a change related to income.

(4) If new information provided by an enrollee in accordance with subsection (1)(a) of this section is verified:

(a) Eligibility shall be redetermined in accordance with the standards in Section 1, 2, 3, 9, or 10 of this administrative regulation;

(b) The enrollee shall be notified of the redetermination in accordance with the requirements in 45 C.F.R. 155.310(g); and

(c) If applicable, the enrollee's employer shall be notified in accordance with the requirement established by 45 C.F.R. 155.310(h).

(5) If updated information obtained in accordance with subsection (1)(b) of this section regarding death or related to eligibility not regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information; and

2. The projected enrollees' eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice in paragraph (a) of this subsection to notify the KHBE if the information is inaccurate.

(6) If an enrollee responds to the notice in subsection (5)(a) of this section, contesting the updated information in the notice, the KHBE shall proceed in accordance with 45 C.F.R. 155.315(f).

(7) If an enrollee does not respond to the notice in subsection (5)(a) of this section within the thirty (30) day timeframe specified in subsection (5)(b) of this section, the KHBE shall:

(a) Redetermine eligibility in accordance with the standard in Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements established by 45 C.F.R. 155.310(g).

(8) With the exception of information regarding death, if updated information regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information regarding income, family size, and family composition obtained in accordance with subsection (1)(b) of this section; and

2. The projected eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice to:

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1. Confirm the updated information; or
2. Provide additional information.

(9) If the enrollee responds to the notice in subsection (8)(a) of this section by confirming the updated information, the KHBE shall:

(a) Redetermine the enrollee's eligibility in accordance with Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements established by 45 C.F.R. 155.310(g).

(10) If the enrollee does not respond to the notice in subsection (8)(a) of this section within the thirty (30) day timeframe established by subsection (8)(b) of this section, the KHBE shall maintain the enrollee's existing eligibility determination without considering the updated information in subsection (8)(a) of this section.

(11) If the enrollee responds with more updated information, the KHBE shall verify the updated information in accordance with 45 C.F.R. 155.315 and 155.320.

(12) The effective date of a change resulting from a redetermination pursuant to this section shall be in accordance with 45 C.F.R. 155.330(f).

(13) The amount of an APTC or eligibility for a CSR as a result of an eligibility redetermination in accordance with this section shall be recalculated in accordance with 45 C.F.R. 155.330(g).

Section 9. Annual Eligibility Redetermination.

(1) A qualified individual shall:

(a) Have an annual redetermination of eligibility; and

(b) Be sent a notice of the annual redetermination that includes:

1. The data obtained under subsection (2) of this section;
2. The data used in the qualified individual's most recent eligibility determination; and

3. The projected eligibility determination for the following year, after considering the information in subparagraph 1. of this paragraph.

(2)(a) A qualified individual requesting an eligibility determination for an insurance affordability program shall authorize the release of updated tax return information, data regarding Social Security benefits, and data regarding MAGI-based income as described in 45 C.F.R. 155.320(c)(1) for use in the qualified individual's eligibility redetermination.

(b) Eligibility shall not be redetermined for a qualified individual requesting an eligibility determination for an insurance affordability program who does not authorize the release of updated tax return information.

(3) A qualified individual may authorize the release of tax return information for a period of no more than five (5) years based on a single authorization, if the authorization permits the qualified individual to:

(a)1. Decline to authorize the release of updated tax return information; or

2. Authorize the release of updated tax return information for fewer than five (5) years; and

(b) Discontinue, change, or renew the authorization at any time.

(4) A qualified individual, an application filer, or an authorized representative, on behalf of the enrollee, shall report any changes with respect to the information listed in the notice described in subsection (1)(b) of this section:

(a) Within thirty (30) days from the date of the notice; and

(b) Via a method listed in Section 1(5) of this administrative regulation.

(5) Any information reported by a qualified individual under subsection (4) of this section shall be verified as set forth in Section 4 of this administrative regulation.

(6) For a qualified individual who fails to act on the notice described in subsection (1)(b) of this section within the thirty (30) day period established by subsection (4) of this section, eligibility shall be redetermined as set forth in subsection (7)(a) of this section.

(7)(a) After the thirty (30) day period established by subsection (4) of this section:

1. Eligibility of a qualified individual shall be redetermined in accordance with the standards in Section 1, 2, 3, 9, or 10 of this administrative regulation using the information provided in the notice, as supplemented with any information reported by the qualified individual verified in accordance with Section 4 of this administrative regulation;

2. The qualified individual shall be notified in accordance with the requirements in 45 C.F.R. 155.310(g); and

3. If applicable, the qualified individual's employer shall be notified in accordance with 45 C.F.R. 155.310(h).

(b) If a qualified individual reports a change with respect to the information provided in the notice established by subsection (1)(b) of this section that has not been verified by the KHBE as of the end of the thirty (30) day period established by subsection (4) of this section, eligibility shall be redetermined after verification in accordance with Section 4 of this administrative regulation.

(8) The effective date of a redetermination in accordance with this section shall be the later of:

(a) The first day of the coverage year following the year in which the notice in subsection (1)(b) of this section is issued to the qualified individual; or

(b) The date determined in accordance with 45 C.F.R. 155.330(f)(1).

(9) If an enrollee remains eligible for coverage in a QHP upon annual redetermination and has not terminated coverage from the QHP in accordance with Section 10 of this administrative regulation, the enrollee shall:

(a) Remain in the QHP selected the previous year that may include modifications that shall be approved by the Department of Insurance; or

(b) Be enrolled by KHBE in a QHP that is substantially similar that shall be approved by the Department of Insurance.

(10) Eligibility shall not be redetermined if a qualified individual was redetermined eligible in accordance with this section during the prior year, and the qualified individual was not enrolled in a QHP at the time of the redetermination and has not enrolled in a QHP since the redetermination.

Section 10. Eligibility to Enroll in a QHP that is a Catastrophic Plan.

(1) In addition to the requirements in Section 1 of this administrative regulation, to enroll in a QHP that is a catastrophic plan, an applicant shall:

(a) Not have attained the age of thirty (30) before the beginning of the plan year; or

(b) Have a certificate of exemption from the shared responsibility payment issued by the KHBE or HHS for a plan year in accordance with:

1. 26 U.S.C. 5000A(e)(1); or

2. 26 U.S.C. 5000A(e)(5).

(2) Verification related to eligibility for enrollment in a QHP that is a catastrophic plan shall be in accordance with 45 C.F.R. 155.315(j).

Section 11. Special Eligibility Standards and Processes for Indians.

(1) An applicant who is an Indian shall be eligible for the special cost sharing described in 45 C.F.R. 155.350(b) if the applicant:

(a) Meets the requirements established by 45 C.F.R. 155.305(a) and (f);

(b) Is expected to have a household income that does not exceed the amount established by 45 C.F.R. 305(g)(3)(vi) for the benefit year for which coverage is requested; and

(c) Enrolls in a QHP through the KHBE.

(2) An applicant who is an Indian shall have an eligibility determination for the special cost sharing described in section 45 C.F.R. 155.350(b) without requesting an eligibility determination for an insurance affordability program.

Section 12. Eligibility Determination and Notification Standards.

(1) Eligibility shall be determined in accordance with 45 C.F.R. 155.310(e).

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(2) Notifications regarding eligibility determinations shall be made in accordance with 45 C.F.R. 155.310(g).

Section 13. Termination of Coverage.

(1) An enrollee, including an enrollee who has obtained other minimum essential coverage, may terminate coverage in a QHP by submitting a request:

- (a) Via the website;
- (b) By telephone;
- (c) To the QHP issuer;
- (d) By mail; or
- (e) In person.

(2) An enrollee in a QHP may choose to remain in a QHP without financial assistance if the enrollee:

(a)1. Has been identified as eligible for other minimum essential coverage through the data matching described in 45 C.F.R. 155.330(d); or

2. Has been identified as eligible for Medicaid, KCHIP, or Medicare and has granted prior permission to KHBE; and

(b) Does not request termination in accordance with subsection (1) of this section.

(3) The last day of coverage of an enrollee who terminates coverage in accordance with subsection (1) of this section shall be:

(a) The termination date requested by the enrollee if the enrollee provides reasonable notice in accordance with subsection (7) of this section;

(b) Fourteen (14) days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice in accordance with subsection (7) of this section;

(c) A date determined by the issuer of an enrollee's QHP if the issuer is able to terminate coverage in fewer than fourteen (14) days and the enrollee requests an earlier termination effective date; or

(d) If the enrollee is newly eligible for Medicaid or KCHIP, the day before coverage in Medicaid or KCHIP begins.

(4) An enrollee's health coverage shall be terminated by an issuer if:

(a) The enrollee is no longer eligible for coverage in a QHP through the KHBE;

(b) The enrollee has failed to pay a premium; and

1. A three (3) month grace period required for an individual receiving an APTC has been exhausted as described in 45 C.F.R. 156.270(g); or

2. A thirty (30) day grace period required by KRS 304.17A-243 for an individual not receiving an APTC has been exhausted;

(c) The enrollee's coverage is rescinded in accordance with 45 C.F.R. 147.128 or KRS 304.14-110;

(d) The enrollee is enrolled in a QHP that:

1. Has been decertified pursuant to 900 KAR 10:115; or

2. Has withdrawn from participation in the KHBE; or

(e) The enrollee changes from one (1) QHP to another during an open enrollment period or SEP in accordance with Section 5 or 6 of this administrative regulation.

(5) The last day of coverage of an enrollee shall be:

(a) If terminated in accordance with subsection (4)(a) of this section, the last day of the month following the month in which the notice described in subsection (7) of this section is sent by KHBE, unless the enrollee requests an earlier termination date in accordance with subsection (3) of this section;

(b) If terminated in accordance with subsection (4)(b)1. of this section, the last day of the first month of the three (3) month grace period; or

(c) If terminated in accordance with subsection (4)(b)2. of this section, in accordance with KRS 304.17A-245.

(6) For an enrollee who is terminated in accordance with subsection (4)(e) of this section, the last day of coverage in an enrollee's prior QHP shall be the day before the effective date of coverage in the enrollee's new QHP.

(7) Reasonable notice shall be fourteen (14) calendar days from the requested date of termination of coverage.

Section 14. Authorized Representative.

(1) An individual may designate an authorized representative in

accordance with 45 C.F.R. 155.227.

(2) An authorized representative shall comply with state and federal laws regarding:

(a) Conflict of interest; and

(b) Confidentiality of information.

(3) An applicant may authorize a representative to:

(a) Sign an application on behalf of the applicant;

(b) Submit an update or respond to a redetermination of eligibility for the applicant in accordance with Section 7 or 8 of this administrative regulation;

(c) Receive a copy of a notice or communication from the KHBE;

(d) Make an appeal request on behalf of an appellant; and

(e) Act on behalf of the individual in a matter with the KHBE.

(4) An authorization for an authorized representative shall be valid until:

(a) An applicant:

1. Changes the authorization; or

2. Notifies the KHBE and the authorized representative, through a method described in 45 C.F.R. 155.405(c), that the authorized representative is no longer authorized to act on behalf of the individual; or

(b) The authorized representative informs the KHBE and the individual that the authorized representative is no longer acting as the authorized representative.

Section 15. SHOP Employer Eligibility.

(1) An employer shall be a qualified employer and eligible to purchase coverage through SHOP if the employer meets the eligibility requirements established in 45 C.F.R. 155.710(b).

(2) An employer shall apply for an eligibility determination online to participate in SHOP.

(3) At the time of application, an employer shall provide:

(a) Employer name;

(b) Address of employer location;

(c) A valid federal employer identification number; and

(d) Information sufficient to confirm the employer is:

1. A small employer; and

2. Offering at a minimum, all full-time employees coverage in a QHP through SHOP.

(4) Except as provided in 45 C.F.R. 147.104(b)(1)(i)(B), a qualified employer shall meet a minimum group participation rate of fifty (50) percent, calculated as described in 45 C.F.R. 155.706(b)(10)(i).

(5) A qualified employer may purchase coverage for its qualified employees at any time during the year.

(6) An employer's plan year shall be the twelve (12) month period beginning with the effective date of coverage.

(7) An employer shall enroll in a QHP or SADP certified by the division by contacting an issuer or a participating agent.

(8) A qualified employer who ceases to be a small employer by reason of an increase in the number of employees shall be eligible to participate in SHOP until the employer:

(a) Fails to otherwise meet the eligibility criteria of this section; or

(b) Chooses to no longer purchase health coverage.

(9) An employer that fails to meet the requirements in subsection (1) of this section, shall be denied eligibility to participate in SHOP.

Section 16. SHOP Right to Formal Review.

(1) An employer applicant may request a formal review of a:

(a) Denial of eligibility as set forth in Section 15(9) of this administrative regulation; or

(b) Failure of the KHBE to make an eligibility determination to participate in SHOP within fifteen (15) calendar days of receiving an application from an employer.

(2) Within ninety (90) days of receipt of a notice of denial of eligibility, an employer may submit a formal review request to the division:

(a) By telephone;

(b) By mail; or

(c) By email.

(3) A formal review request shall clearly state a reason for the formal review in accordance with subsection (1) of this section.

(4) If an employer is notified that a formal review request does not meet the requirements of this section, the employer may amend the request to satisfy the requirements.

Section 17. SHOP Dismissal of a Formal Review.

(1) A formal review by an employer shall be dismissed if the employer:

(a) Withdraws the formal review request in writing; or

(b) Fails to submit a formal review request that meets the requirements in Section 16 of this administrative regulation.

(2) If a formal review is dismissed in accordance with subsection (1) of this section, the division shall provide written notice to the employer:

(a) Within three (3) business days of the dismissal; and

(b) That includes the reason for dismissal.

(3) The division may reverse a dismissal under subsection (2) of this section if an employer makes a written request within thirty (30) days of the date of the notice of dismissal in subsection (2) of this section showing good cause why the dismissal shall be reversed.

Section 18. SHOP Desk Review.

(1) An employer shall have the opportunity to submit evidence to the division for review of an eligibility determination.

(2) The division shall consider:

(a) The information used to determine the employer's eligibility; and

(b) Any additional evidence provided by the employer under subsection (1) of this section.

(3) An applicant's formal review request shall be desk reviewed by one (1) or more impartial division officials who have not been directly involved in the eligibility determination implicated in the formal review.

Section 19. SHOP Formal Review Decision.

(1) A desk review by an official of the division shall result in a final formal review decision.

(2) A final formal review decision shall:

(a) Be in writing;

(b) Be based on the eligibility requirements in Section 15 of this administrative regulation;

(c) State the decision and the effect of the decision on the eligibility of the employer;

(d) Summarize the facts relevant to the formal review;

(e) Identify the legal and regulatory basis for the decision;

(f) State the effective date of the decision; and

(g) Be rendered within ninety (90) days of receipt by the division of an employer formal review request.

(3) The division shall issue written notice of the formal review decision to the employer within ninety (90) days of the date of receipt of a formal review request.

(4) If the formal review decision affects the employer's eligibility, the division shall implement the formal review decision.

Section 20. SHOP Formal Review Record. The formal review record shall be available and accessible to an employer:

(1) In a convenient format; and

(2) During regular business hours, which shall:

(a) Be Monday through Friday from 8:00 a.m. to 4:30 p.m.; and

(b) Exclude holidays.

Section 21. Incorporation by Reference.

(1) "Kentucky QHP/APTC Eligibility Verification Plan", Revised March, 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Health Benefit Exchange, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at www.khbe.ky.gov.

ROBERT PUTT, Executive Director

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 12, 2021

FILED WITH LRC: March 15, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 24, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 17, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Advisor, 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: Melea Rivera and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market, the operation of a Small Business Health Options Program, and the formal review process related to SHOP on the Kentucky Health Benefit Exchange pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform issuers of the requirements for certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange. This administrative regulation is necessary:

1. So the Kentucky Health Benefit Exchange may timely determine eligibility and facilitate enrollment in qualified health plans. Eligibility determination and enrollment in qualified health plans is necessary for the provision of health care services provided in the Commonwealth through the Exchange. Additionally, individuals must enroll through the Exchange for the purchase of health insurance to receive advanced payments of the premium tax credit and cost sharing deductions;

2. To establish the policies and procedures relating to the operation of a Small Business Health Options Program; and

3. To establish policies and procedures for a formal review process related to SHOP employers in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides detailed requirements for individual enrollment and eligibility on the Kentucky Health Benefit Exchange, requirements for the small business health options program and how small businesses may enroll employees in qualified plans to comply with the statute and qualify for small employer health insurance tax credits, and establishes a formal review process related to SHOP employers in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation provides detailed requirements for individual enrollment and eligibility on the Kentucky Health Benefit Exchange; requirements for the small business health options program and how small businesses may enroll employees in qualified plans to comply with the statute and qualify for small employer health insurance tax credits pursuant to 26 U.S.C. 45R; and provides detailed requirements for a formal review process related to SHOP employers in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(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 government affected by this administrative regulation: This administrative regulation will affect approximately 300,000 individuals that may apply for health insurance in a qualified health plan to be offered on the Kentucky Health Benefit Exchange, approximately 2,500 small businesses that may purchase health insurance for their employees and potentially qualify for small employer health insurance tax credits, and approximately 250 SHOP employers seeking health insurance coverage on the Kentucky Health Benefit Exchange that may request a formal review.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual will make an application for a qualified health plan in the individual market offered on the Exchange. An application may be submitted via the KHBE website, by telephone, by mail, or in person; each small employer will be able to submit an application online to participate in SHOP and purchase insurance for their employees through an agent or issuer; and each employer seeking to participate on SHOP may make request a formal review related to eligibility on the Kentucky Health Benefit Exchange.

(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 an individual or small employer that wishes to make an application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each individual as individuals that enroll in a qualified health plan through the Exchange may be able to receive advanced payments of the premium tax credit and cost sharing deductions for the purchase of health insurance; each small business as it may ease the administrative burden of administering their health insurance program and may benefit certain employers through health insurance tax credits; and each employer that may request to participate on the Kentucky Health Benefit Exchange by providing a formal review process.

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

(a) Initially: The estimated cost to implement a state-based exchange will be \$5,000,000 to the state but will result in significant savings to Kentuckians through reductions in health insurance premiums.

(b) On a continuing basis: The estimated cost will be \$2,000,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Division

of Health Benefit Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. KRS 304.14-110, 304.17A-125, 304.17A-243, 304.17A-245, Chapter 304, 26 U.S.C. 5000A, 9831, 6011, 6012, 42 U.S.C. 18031, 26 C.F.R. 1.36B-2, 1.36B-3, 54.9801-6, 54.9802-4, 29 C.F.R. 2590.702-2, 42 C.F.R. 435.320, 45 C.F.R. 146.123, 147.104, 147.128, Parts 155, 156.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market to be offered on the Kentucky Health Benefit Exchange, pursuant to, and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156, it establishes the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. parts 155 and 156, and it establishes the policies and procedures for a formal review process related to SHOP employers in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

3. Minimum or uniform standards contained in the federal mandate The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a QHP in Kentucky. An Exchange must establish eligibility and enrollment criteria for individuals wishing to enroll in qualified health plans offered on the Exchange. An Exchange must establish a Small Business Health Options Program (SHOP). A SHOP is designed to assist qualified small employers in the state in enrolling their employees in qualified health plans in the state's small group market. An Exchange must make a formal review process available to SHOP employers

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. This administrative regulation does not impose stricter requirements than those required by the federal mandate

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 affects the Office of Health Data and Analytics, Division of Health Benefit Exchange within the Cabinet for Health and Family Services and the Department of Insurance within the Public Protection and Regulation Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 304.14-110, 304.17A-125, 304.17A-243, 304.17A-245, Chapter 304, 26 U.S.C. 5000A, 9831, 6011, 6012, 42 U.S.C. 18031, 26 C.F.R. 1.36B-2, 1.36B-3, 54.9801-6, 54.9802-4, 29 C.F.R. 2590.702-2, 42 C.F.R. 435.320, 45 C.F.R. 146.123, 147.104, 147.128, Parts 155, 156.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This 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.

(c) How much will it cost to administer this program for the first year? Approximately \$2,000,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$2,000,000.

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

Revenues (+/-):

Expenditures (+/-): \$2,000,000

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Health Benefit Exchange
(New Administrative Regulation)**

**900 KAR 10:125. KHBE Consumer Assistance Program,
Kynector Certification, and Individual Agent Participation with
the KHBE.**

RELATES TO: KRS Chapter 45A, 304.2-310, Chapter 304, 26 U.S.C. 794, 42 U.S.C. 12101-12103, 18031, 45 C.F.R. Part 155

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Benefit Exchange has responsibility to administer the Kentucky Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to the registration of an individual agent and certification of a kynector, including a certified application counselor or navigator in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

Section 1. KHBE Consumer Assistance Programs.

(1) The kynector program, in accordance with the accessibility standards of 42 C.F.R. 155.205(c) and (d), shall include the following:

(a) The certified application counselor program described in Section 2 of this administrative regulation; and

(b) The navigator program described in Section 3 of this administrative regulation.

(2) A kynector shall:

(a) Receive training in accordance with 45 C.F.R. 155.215(b)(2) that shall be provided by the division or an approved vendor;

(b) Complete Medicaid, KCHIP, and other applicable training provided by CHFS;

(c) Complete all training required by the division within three (3) attempts;

(d) Enter into an agreement with the division to comply with the applicable standards of 45 C.F.R. 155.205, 155.210, 155.215, and 155.225 and this administrative regulation;

(e) Refer a consumer to other consumer assistance programs and community resources in Kentucky if available and appropriate;

(f) Be prepared to serve the individual exchange, Medicaid program, KCHIP, and other programs as designated by the secretary of CHFS; and

(g) Comply with the privacy and security standards consistent with 45 C.F.R. 155.260.

Section 2. Certified Application Counselor Program.

(1) The certified application counselor program shall comply with the provisions of 45 C.F.R. 155.225.

(2) An organization shall apply to the division to be designated as a certified application counselor.

(3) Upon designation by the division to participate in the certified application counselor program, an organization shall:

(a) Act in the best interest of an applicant;

(b) Provide information in a manner that is accessible to individuals with disabilities directly or through a referral to a kynector; and

(c) Provide quarterly reports of an activity to the division.

(4) A staff or a volunteer of a certified application counselor organization shall act as a kynector to:

(a) Provide information about an insurance affordability program and a QHP or SAMP coverage option;

(b) Assist an individual to apply through the KHBE for coverage in a QHP, SAMP, or an insurance affordability program; and

(c) Help to facilitate enrollment of a qualified individual in a QHP, SAMP, or an insurance affordability program.

(5) An individual operating as a certified application counselor shall:

(a) Be identified by a designated organization described in subsection (2) of this section as an employee or a volunteer of the designated organization;

(b) Agree to act in the best interest of an applicant;

(c) Provide information with reasonable accommodation for an individual with a disability, as defined by 42 U.S.C. 12101 through 12103, if providing in-person assistance; and

(d) Register with the division through the KOG.

(6) A certified application counselor shall not:

(a) Impose any charge or fee on an applicant for application assistance;

(b) Receive compensation or a referral fee from an agent; or

(c) Enter into an exclusive referral agreement with an agent.

(7) In accordance with the procedures established in Section 4 of this administrative regulation, the division shall withdraw certification from a kynector or kynector entity if it finds noncompliance with the terms and conditions of the kynector or kynector entity agreement or this administrative regulation.

Section 3. Navigator Program.

(1) In accordance with 45 C.F.R. 155.205(d) and (e), 45 C.F.R. 155.210, and 45 C.F.R. 155.215, the division shall establish a navigator program to authorize an eligible public or private entity to carry out consumer assistance functions as described in 45 C.F.R. 155.205 and this section.

(2) An entity wishing to participate as a navigator shall:

(a) Be awarded a contract by the division pursuant to policies and procedures established by the Finance and Administration Cabinet and KRS Chapter 45A;

(b) Designate an individual as the participating entity representative who shall:

1. Register with the division through the KOG as the individual authorized by the agency;

2. Serve as a primary contact for the division;

3. Be responsible for ensuring that only an employee of the navigator agency is registered through KOG as a certified navigator;

4. Comply with 45 C.F.R. 155.210(b)(1) and (d) regarding a conflict of interest; and

5. As a navigator employee, comply with this subsection;

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(c) Designate an individual employee who shall participate through the navigator entity and who shall register with the division through the KOG;

(d) Submit to the division a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under 45 C.F.R. 155.205(d) and (e), and 45 C.F.R.155.210; and

(e) Provide a monthly report of activities to the division.

(3) An employee designated as a navigator by the kynector entity shall:

(a) Be eighteen (18) years of age or older;

(b) Provide an authorization to the navigator entity to conduct a state background check for evidence of good character; and

(c) Travel, if necessary, to assist an applicant with enrollment.

(4) A navigator entity and its employees shall:

(a) Inform an applicant of the functions and responsibilities of a navigator and a participating agent;

(b) Obtain authorization for the disclosure of applicant information prior to assisting an applicant with prescreening and completion of the application process; and

(c) Provide technical support to another navigator, navigator entity, or the division upon request.

(5) Upon authorization by the division, a navigator may assist:

(a) A qualified individual with enrollment in any QHP or SADP offered through the KHBE in the individual market;

(b) A small employer with applying for an eligibility determination online to participate on SHOP; or

(c) An individual with applying for insurance affordability programs, including Medicaid or KCHIP, and other public assistance programs as designated by KHBE.

(6) A navigator entity and its employees shall:

(a) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about a QHP, SADP, or an insurance affordability program; and

(b) Provide information and services in a fair, accurate, and impartial manner.

(7) A navigator entity and its employees shall not:

(a) Impose any charge or fee on an applicant for their assistance;

(b) Receive compensation or a referral fee from an agent; or

(c) Enter into an exclusive referral agreement with an agent.

(8) A navigator entity and its employees shall provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange, including individuals with limited English proficiency, and ensure accessibility and usability of navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act, 42 U.S.C. 12101, Section 504 of the Rehabilitation Act, and 29 U.S.C. 794.

(9) A navigator entity or its employees shall provide a referral to the DOI for any enrollee or qualified individual with a grievance, complaint, or question regarding a health plan, coverage, or a determination under the plan or coverage.

(10) A navigator entity or its employees shall demonstrate to the division that the entity has existing relationships, or could readily establish relationships, with:

(a) Consumers, including uninsured and underinsured consumers; or

(b) Self-employed individuals eligible for a QHP, SADP, or another insurance affordability program.

(11)(a) In accordance with Section 4 of this administrative regulation, the division shall withdraw certification if it finds noncompliance with the terms and conditions of the agreement from:

1. An individual navigator; or

2. A navigator entity.

(b) In addition to withdrawal of certification, the division may enforce any penalty as specified in the contract.

Section 4. Withdrawal of Certification of a kynector and Appeals.

(1) If the division finds noncompliance with the terms and

conditions of an agreement or this administrative regulation, the division shall:

(a) Provide the kynector entity or kynector with notice that the applicable certification shall be withdrawn as of the date on the notice;

(b) Allow the kynector entity or kynector an opportunity to submit evidence of compliance or additional information within ten (10) business days;

(c) Review any information submitted by the kynector entity or kynector; and

(d) Based on a review of the information provided, issue a final decision to withdraw or reinstate the applicable certification of the kynector entity or kynector.

(2) A kynector entity or kynector may appeal a final decision to withdraw the applicable certification by submitting a written request to the division within ten (10) business days of the final decision.

(3) After one (1) year following a decision to withdraw certification of a kynector entity or kynector, the kynector or kynector entity may reapply in accordance with this administrative regulation.

Section 5. Requirements to be a Participating Individual Agent. An agent wishing to participate on KHBE in accordance with 42 U.S.C. 18031 and 45 C.F.R. 155.220 shall:

(1) Be licensed by DOI with a health line of authority;

(2) Complete the agent training provided by the division in accordance with 45 C.F.R. 155.220(d)(2) within three (3) attempts;

(3) Enter into an agreement with the division to comply with the applicable standards of 45 C.F.R. 155.205 and 155.220 and this administrative regulation;

(4) Comply with the privacy and security standards of 45 C.F.R. 155.260;

(5) Except for an employee of an issuer or an individual agent directly contracted with an issuer, maintain:

(a) An appointment with at least one (1) QHP or SADP issuer participating on the KHBE; or

(b) A designation with a business entity having an appointment with at least one (1) QHP or SADP issuer participating on the KHBE;

(6) Register with the KHBE through the KOG; and

(7) Not serve as a web broker or consultant while assisting individuals with the activities described in Section 6 of this administrative regulation.

Section 6. Permitted Activities of a Participating Individual Agent.

(1) Upon completion of the registration requirements as set forth in Section 5 of this administrative regulation, a participating individual agent may:

(a) Enroll a qualified individual in any QHP or SADP offered by an issuer with which the individual agent has the appropriate designation or appointment as required by Section 5(5) of this administrative regulation through the KHBE in the individual market;

(b) Assist a qualified employer in selecting a QHP or SADP offered by an issuer with which the individual agent has the appropriate designation or appointment as required by Section 5(5) of this administrative regulation; or

(c) Assist an individual to apply through the KHBE for coverage in a QHP, SADP, or an insurance affordability program.

(2) A qualified individual may be enrolled in a QHP or SADP through the KHBE by a participating individual agent if the participating individual agent ensures the applicant's completion of an application as described in 42 C.F.R. 155.405.

(3) A participating individual agent shall:

(a) Disclose to a potential applicant any relationships the individual agent has with a QHP or SADP issuer, insurance affordability program, or other potential conflicts of interest identified by the division; and

(b) Not:

1. Impose any charge or fee on an applicant for assistance in completing an application for, or enrolling in, a QHP, a SADP, or an insurance affordability program;

2. Provide compensation or a referral fee to a kynector; and
3. Enter into an exclusive referral agreement with a kynector.

(4) If the division finds noncompliance with this administrative regulation, the division shall withdraw an agent's registration and participation with the KHBE after giving:

- (a) Notice to the participating individual agent; and
- (b) An opportunity to respond to the notice required by paragraph (a) of this subsection in accordance with Section 5 of this administrative regulation.

Section 7. Renewal of Participation and Registration with the Division. To maintain registration with the division, a participating individual agent shall:

- (1) Comply with training provided by the division;
- (2) Enter into an agreement with the division to comply with the applicable standards of 45 C.F.R. 155.205 and 155.220 and this administrative regulation;
- (3) Maintain licensure, appointments, and designations as identified in Section 5 of this administrative regulation;
- (4) Comply with the requirements of 45 C.F.R. 155.220; and
- (5) Comply with 900 KAR Chapter 10.

Section 8. Withdrawal of Registration as an Individual Agent and Appeals.

(1)(a) Except as provided in subsection (2) of this section, if the division finds noncompliance with the terms and conditions of an individual agent agreement or 900 KAR Chapter 10, the division shall:

1. Provide the participating individual agent with notice that the applicable registration shall be withdrawn as of the date of notice;
2. Allow the participating individual agent an opportunity to submit evidence of compliance or additional information within ten (10) business days;
3. Review any information submitted by the participating individual agent; and
4. Based on a review of the information provided, issue a decision to uphold the withdrawal or reinstate the applicable registration of a participating individual agent.

(b) A participating individual agent shall have the right to appeal a decision to withdraw registration in accordance with paragraph (a) of this subsection through the division.

(2)(a) If the health line of authority or licensure of an agent is suspended, revoked, or expired, the registration of the agent shall be withdrawn by the division based on DOI's administrative action.

(b) Any appeal or request of an action by DOI pursuant to paragraph (a) of this subsection shall be made to DOI in accordance with KRS 304.2-310(2)(b).

(3) After one (1) year following a decision to withdraw the registration of a participating individual agent, the individual agent may reapply in accordance with Section 5 of this administrative regulation.

ROBERT PUTT, Executive Director
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 12, 2021

FILED WITH LRC: March 15, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 24, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 17, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2021. Send written notification of intent to attend the public hearing or written

comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Advisor, 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: Melea Rivera and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the consumer assistance program for the Kentucky Health Benefit Exchange and the policies and procedures relating to the certification of kynectors in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155, and establishes the policies and procedures of the Kentucky Health Benefit Exchange relating to the registration of an individual agent in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to certify kynectors so they may provide information about insurance affordability programs and coverage options, assist individuals to apply for coverage, and help facilitate enrollment of eligible individuals in QHPs offered on the Health Benefit Exchange, and it is necessary to inform individual agents of the registration requirements for participation on the Kentucky Health Benefit Exchange.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that individuals or entities seeking to become a kynector are aware of the requirements for certification so they may provide information about insurance affordability programs and coverage options, assist individuals to apply for coverage, and help facilitate enrollment of eligible individuals in QHPs offered on the Health Benefit Exchange, and it is necessary to provide the registration requirements for individual agents seeking to participate on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for individuals or entities seeking to become a kynector or kynector entity so they may provide information about insurance affordability programs and coverage options, assist individuals to apply for coverage, and help facilitate enrollment of eligible individuals in QHPs offered on the Health Benefit Exchange to comply with the statute and it provides detailed information about the registration requirements for individual agents seeking to participate on the Kentucky Health Benefit Exchange to comply with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

(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 government affected by this administrative regulation: This administrative regulation will affect approximately 1,200 individual that may request to become kynectors and approximately 7,500 individual agents that may request to be registered to participate on the Kentucky Health Benefit Exchange.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual or entity wishing to be a kynector or kynector entity will complete training, register through the Kentucky Online Gateway, respond to a request for proposal (if appropriate), and help to facilitate enrollment of eligible individuals in QHPs and insurance affordability programs; and each individual agent will be licensed by DOI, complete KHBE training, enter into an agreement to comply with 45 C.F.R 155.205 and 220, meet privacy and security standards, register with KHBE through the Kentucky Online Gateway, and maintain an appointment with at least one (1) QHP issuer participating on the KHBE or be a captive agent of an issuer.

(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 entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each individual or entity that may request to participate in the consumer assistance program by providing detailed instructions regarding certification, and it will benefit each individual agent that seeks to participate on the Kentucky Health Benefit Exchange by providing detailed instructions regarding the registration requirements.

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

(a) Initially: The estimated cost to implement a state-based exchange will be \$5,000,000 to the state but will result in significant savings to Kentuckians through reductions in health insurance premiums.

(b) On a continuing basis: The estimated cost will be \$2,000,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Division of Health Benefit Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. KRS Chapter 45A, 304.2-310, Chapter 304, 26 U.S.C. 794, 42 U.S.C. 12101-12103, 18031, 45 C.F.R. Part 155.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the consumer assistance program of the Kentucky Health Benefit Exchange and the policies and procedures relating to the certification of kynectors in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155; it also establishes the policies and procedures of the Kentucky Health Benefit Exchange relating to the registration of an individual agent in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of

the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a QHP in Kentucky. An Exchange must make qualified health plans available to qualified individuals and qualified employers. The Exchange must establish a Consumer Assistance Program. This program will allow individuals to provide information about insurance affordability programs and coverage options, assist individuals to apply for coverage, and help facilitate enrollment of eligible individuals in QHPs offered on the Health Benefit Exchange. At a minimum, an Exchange must implement procedures for participation of individual agents seeking to participate on the Exchange. This registration may be done if the individual agent is licensed by DOI, completes KHBE training, enters into an agreement to comply with 45 C.F.R 155.205 and 220, complies with privacy and security standards, registers with KHBE through the Kentucky Online Gateway, and maintains an appointment with at least one (1) QHP issuer participating on the KHBE or is a captive agent of an issuer.

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. This administrative regulation does not impose stricter requirements than those required by the federal mandate

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 affects the Office of Health Data and Analytics, Division of Health Benefit Exchange within the Cabinet for Health and Family Services and the Department of Insurance within the Public Protection and Regulation Cabinet.

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. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This 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.

(c) How much will it cost to administer this program for the first year? Approximately \$2,000,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$2,000,000.

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

Revenues (+/-):
Expenditures (+/-): \$2,000,000
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Health Benefit Exchange
(New Administrative Regulation)

900 KAR 10:130. Appeals of Eligibility for KHBE Participation and Insurance Affordability Programs.

RELATES TO: KRS 13B.050, 13B.080, 13B.090, 13B.110, 13B.120, 13B.140, 42 U.S.C. 18031, 26 C.F.R. 1.36B-4, 45 C.F.R.

Parts 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Benefit Exchange has responsibility to administer the Kentucky Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to appeals of eligibility determinations for KHBE participation and insurance affordability programs on the Kentucky Health Benefit Exchange pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Right to Appeal an Individual Eligibility Determination or Redetermination.

(1) An applicant or an enrollee shall have the right to make an appeal request of:

(a) An eligibility determination made in accordance with 45 C.F.R. 155.300 to 155.355 and 900 KAR 10:120, including:

1. An initial determination of eligibility for enrollment in a QHP or SADP, including the amount of APTC and CSR, made in accordance with the standards specified in 45 C.F.R. 155.305(a) through (h); or

2. A redetermination of eligibility, including the amount of APTC and CSR, made in accordance with 45 C.F.R. 155.330 and 155.335;

(b) A determination of eligibility for an enrollment period;

(c) A failure by the KHBE to provide timely notice of an eligibility determination pursuant to 45 C.F.R. 155.310(g), 155.330(e)(1)(ii), 155.335(h)(1)(ii), or 155.610(i); or

(d) A denial of a request to vacate dismissal made by DAH in accordance with 45 C.F.R. 155.530(d)(2), made pursuant to Section 8(3) of this administrative regulation.

(2) An appeal request that fails to meet the criteria in subsection (1) of this section shall not be considered an acceptable appeal request, and the division shall send written notice to the appellant to:

(a) State the appeal request has not been accepted and explain the nature of the defect in the appeal request; and

(b) Explain that the applicant or enrollee may cure the defect and resubmit the appeal request within ninety (90) days of the notice of action.

(3) Upon exhaustion of the appeal process established in this administrative regulation, an appellant shall have the right to:

(a) Appeal to HHS in accordance with 45 C.F.R. 155.520(c); and

(b) Seek a judicial review of an appeal decision pursuant to KRS 13B.140.

(4) The DAH shall conduct an appeal of an individual eligibility determination, except for an eligibility determination for an exemption made in accordance with 45 C.F.R. 155.605.

(5) An appeal of an eligibility determination of an exemption shall be conducted by HHS.

Section 2. Individual Appeal Designation of a Representative.

(1) An appellant may represent himself or herself or be represented during an appeal process by:

(a) Legal counsel;

(b) A relative;

(c) A friend; or

(d) Another individual not listed in paragraph (a), (b), or (c) of this subsection.

(2) The division shall designate a representative to act on behalf of the division for the hearing.

Section 3. Individual Appeal Notice of Appeal Rights.

(1) An applicant or an enrollee shall be notified of the right to appeal, timeframe to file an appeal, and how to file an appeal at

the time:

(a) The applicant submits an application; and

(b) A notice of eligibility determination is sent by KHBE under 45 C.F.R. 155.310(g) or 155.330(e)(1)(ii), or by HHS under 45 C.F.R. 155.610(i).

(2) A notice described in subsection (1) of this section shall include:

(a) An explanation of the applicant or enrollee's appeal rights in accordance with this administrative regulation;

(b) A description of the procedure and timeframe within which to request an appeal;

(c) Information on the applicant or enrollee's right to represent himself or herself or to be represented by legal counsel or other authorized person as identified in Section 2 of this administrative regulation;

(d) An explanation of the circumstances under which the appellant's or enrollee's eligibility may be maintained or reinstated pending an appeal decision in accordance with Section 7 of this administrative regulation; and

(e) An explanation that an appeal decision for one (1) household member may result in a:

1. Change in eligibility for another household member; or

2. Redetermination of eligibility in accordance with 900 KAR 10:120.

Section 4. Individual Appeal Requests.

(1) An applicant or an enrollee may submit an appeal request:

(a) By phone;

(b) By mail;

(c) In person; or

(d) Via the internet.

(2) Upon request, the division or the DAH shall assist an applicant or enrollee in filing an appeal.

(3) An applicant or enrollee's right to appeal shall not be limited or interfered with by an employee or representative of the division.

(4) An applicant or enrollee shall have thirty (30) days from the date of notice of an eligibility determination or redetermination to submit an appeal request.

Section 5. Individual Appeal Informal Resolution Completed by the Division.

(1) After receiving an appeal request, the division shall:

(a) Conduct a desk review of an appeal prior to sending the appeal to the DAH; and

(b)1. Except as provided in subparagraph 2. of this paragraph, complete the review within fifteen (15) calendar days of receipt of the appeal request; or

2. For an expedited appeal request submitted in accordance with Section 10 of this administrative regulation, complete the review within three (3) business days.

(2) An appellant shall:

(a) Have the right to a hearing if the appellant is dissatisfied with the outcome of the informal resolution process; and

(b) Not have to provide duplicative information or documentation previously provided during the application process.

(3) The outcome of an informal resolution shall be final and binding and the appeal shall not advance to a hearing if the appellant:

(a) Is satisfied with the outcome of the informal resolution process; and

(b) Withdraws his or her appeal request in accordance with Section 11 of this administrative regulation.

(4) If an appellant is dissatisfied with the outcome of the information resolution process, KHBE shall send:

(a) The appeal request and all documents utilized by the division in the desk review to DAH no later than five (5) business days after the completion of the informal resolution process; and

(b) A written notice to the appellant that includes:

1. Notification that the appeal request has been sent to DAH for a hearing;

2. Information regarding the appellant's eligibility pending appeal in accordance with Section 7 of this administrative regulation; and

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3. An explanation that any APTCs paid on behalf of a tax filer pending appeal are subject to reconciliation under 26 C.F.R. 1.36B-4.

Section 6. Individual Appeal Acknowledgement of Appeal Request and Eligibility Record by DAH.

(1) A request for an appeal sent by KHBE to the DAH shall be reviewed by DAH to ensure that the appeal request is valid.

(2) Upon receipt of a valid appeal request, the DAH shall:

(a) Send timely notice to the appellant of receipt of the valid appeal, to include the hearing requirements contained in Section 9 of this administrative regulation; and

(b) Confirm receipt of the records transferred by KHBE pursuant to Section 5(4)(a) of this administrative regulation.

(3) The DAH shall consider an appeal request valid if the request:

(a) Was incorrectly delivered or mailed to a department or division of the Cabinet for Health and Family Services; and

(b) Is otherwise valid.

(4) Upon receipt of an appeal request that is not valid, the DAH shall:

(a) Send written notice to the appellant and KHBE that the appeal request has not been accepted and of the nature of the defect in the appeal request; and

(b) Accept an amended appeal request as valid that meets the requirements of this administrative regulation.

Section 7. Individual Eligibility Pending Appeal.

(1) An appellant who has submitted an acceptable request as described in Section 1 of this administrative regulation of a redetermination of eligibility in accordance with Section 4 of this administrative regulation shall be considered eligible while the appeal is pending.

(2) If a tax filer or appellant accepts eligibility pending an appeal of an eligibility redetermination, the appellant's eligibility for an APTC or CSR or enrollment in a QHP or SADP as applicable shall be continued in accordance with the level of eligibility immediately before the redetermination being appealed.

(3) An appellant may waive receipt of APTCs pending the outcome of an appeal.

(4) The continued receipt of APTCs during an appeal may impact the amount owed or due by an appellant during the reconciliation process set forth in 26 C.F.R. 1.36B-4, depending upon the appeal decision.

(5) Eligibility pending appeal shall not be applicable to an appellant appealing an initial denial of eligibility for APTCs.

Section 8. Individual Dismissal of an Appeal.

(1) An appeal shall be dismissed by DAH if the appellant:

(a) Withdraws the appeal request in accordance with Section 11 of this administrative regulation;

(b) Fails to appear at a scheduled hearing without good cause;

(c) Fails to submit a valid appeal request as specified in Section 4 of this administrative regulation; or

(d) Dies while the appeal is pending.

(2) If an appeal is dismissed in accordance with subsection (1) of this section, DAH shall provide timely written notice to the appellant and the division that includes:

(a) The reason for the dismissal;

(b) An explanation of the effect of the dismissal on the appellant's eligibility;

(c) An explanation of how the appellant may show good cause why the dismissal should be vacated in accordance with subsection (3)(a) of this section;

(d) A statement of the eligibility determination to be implemented; and

(e) A statement discontinuing eligibility provided under Section 7 of this administrative regulation, if applicable.

(3) DAH shall:

(a) Vacate a dismissal under this section and proceed with the appeal if the appellant makes a written request within thirty (30) days of the date of the notice of the dismissal showing good cause why the dismissal should be vacated; and

(b) Provide timely written notice of the recommendation to the secretary of the Cabinet for Health and Family Services to deny the request to vacate a dismissal to the appellant, if the request is denied.

Section 9. Individual Hearing Requirements.

(1) DAH shall provide written notice to the appellant and the division that:

(a) Acknowledges the appeal request as required by Section 6(2) of this administrative regulation; and

(b) Meets the notice requirements established by KRS 13B.050(3).

(2) An appellant shall have the opportunity to:

(a) Upon request, obtain from the division, copies of the appeal record, including all documents and records to be used at the hearing, prior to the date of the hearing, and during the hearing;

(b) Bring witnesses to testify;

(c) Establish all relevant facts and circumstances;

(d) Present an argument without undue interference; and

(e) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine an adverse witness.

(3) The DAH shall:

(a) Consider the information used to determine an appellant's eligibility;

(b) Consider additional relevant evidence presented during the course of the appeal, including at the hearing; and

(c) Review the appeal without deference to a prior decision in the appeal case.

(4) A hearing shall be conducted:

(a) In accordance with the requirements of KRS 13B.080 and KRS 13B.090;

(b) At a reasonable date, time, and location or format;

(c) After notice of the hearing provided pursuant to subsection (1) of this section;

(d) Consistent with subsection (3) of this section; and

(e) By one (1) or more impartial hearing officers who have not been directly involved in the eligibility determination or any prior appeal decision in the same matter.

Section 10. Individual Expedited Appeals.

(1) An appellant shall have the right to an expedited appeal if:

(a) There is an immediate need for a health service; and

(b) The standard appeal process established in Section 9 of this administrative regulation could seriously endanger the appellant's life, health, or ability to attain, maintain, or regain maximum function.

(2) An expedited appeal shall be requested in the same manner as a standard appeal as set forth in Section 4 of this administrative regulation.

(3) If an expedited appeal is requested, an appellant shall submit evidence of the reason for the expedited appeal.

(4) If an expedited appeal request under this section is denied by the DAH, the DAH shall:

(a) Conduct the appeal under the standard appeal process as set forth in Section 9 of this administrative regulation;

(b) Inform the appellant through electronic or oral notification, if possible, of the denial within the timeframes established by the secretary of HHS; and

(c) If notification is oral, follow up with the appellant by written notice.

(5) A written notice pursuant to subsection (4)(c) of this section shall include:

(a) The reason for the denial;

(b) An explanation that the appeal request shall be transferred to the standard process described in Section 9 of this administrative regulation; and

(c) An explanation of the appellant's rights under the standard process in Section 9 of this administrative regulation.

Section 11. Individual Withdrawal of an Appeal. If an appellant wants to withdraw an appeal, the appellant shall withdraw a request for an appeal:

(1) In writing;

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- (2) Orally to KHBE staff during an informal resolution process described in Section 5 of this administrative regulation; or
- (3) Orally to the hearing officer during an appeal proceeding.

Section 12. Individual Hearing Decision.

(1) After the hearing is concluded or a decision is made not to reverse a dismissal of an appeal, the hearing officer shall issue a recommended order in accordance with the requirements of KRS 13B.110.

(2) A recommended order rendered by the DAH shall be based only on the:

- (a) Information and evidence specified in 45 C.F.R. 155.535(e);
- (b) Eligibility requirements in 900 KAR 10:120;
- (c) Eligibility requirements under 45 C.F.R. 155.300 to 155.355; and

(d) Record of the appeal and hearing.

(3) A recommended order shall:

- (a) Be sent to the appellant and the appellant's authorized representative, if applicable, and the division;
- (b) State the decision;
- (c) Include a plain language description of the effect of the decision on an appellant's eligibility;
- (d) Summarize the facts relevant to the appeal;
- (e) Identify the legal basis, including an administrative regulation that supports the decision; and
- (f) State the effective date of the decision.

(4) If either the appellant or the division is dissatisfied with the recommended order, either party shall have fifteen (15) days from the date the recommended order is mailed to file exceptions to the recommendations with the secretary of the Cabinet for Health and Family Services.

(5) The secretary of the Cabinet for Health and Family Services shall consider the appeal record, including the recommended order and any exceptions filed to a recommended order, in accordance with KRS 13B.120.

(6) The secretary of the Cabinet for Health and Family Services shall:

- (a) Accept the recommended order of the hearing officer and adopt it as the agency's final order;
- (b) Reject or modify, in whole or in part, the recommended order; or
- (c) Remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(7) The secretary of the Cabinet for Health and Family Services shall:

(a) Issue written notice of the final order to the appellant and include in that notice the appellant rights to a judicial review afforded under KRS 13B.140 within ninety (90) days of the date an appeal request under Section 4 of this administrative regulation is received;

(b) If an appeal request is submitted under Section 10 of this administrative regulation that is determined to meet the criteria for an expedited appeal, issue the final order as expeditiously as:

- 1. The appellant's health condition requires; and
- 2. Reasonably possible, consistent with the timeframe established by the secretary of HHS; and

(c) Provide notice of the appeal decision and instructions to cease pended eligibility to:

- 1. The appellant, if applicable; and
- 2. The division.

(8) Upon receipt of a notice described in subsection (7)(a) of this section, the division shall:

(a) Implement the appeal decision:

1. Retroactive to the date the incorrect eligibility determination was made; or

2. At a time determined under 45 C.F.R. 155.330(f); and

(b) Redetermine the eligibility of a household member who has not appealed an eligibility determination but whose eligibility may be affected by the appeal decision, in accordance with the standards described in:

- 1. 900 KAR 10:120; and
- 2. 45 C.F.R. 155.305.

Section 13. Individual Right to Appeal to HHS.

(1) If an appellant disagrees with an appeal decision made in accordance with Section 12 of this administrative regulation or notice of denial of a request to vacate a dismissal under Section 8(3)(b) of this administrative regulation, the appellant may request an appeal from HHS within thirty (30) days of the date of the appeal notice.

(2) Upon receipt of a notice of an appeal under subsection (1) of this section, DAH shall transmit via secure electronic interface the appellant's appeal record, including the appellant's eligibility record received from KHBE, to HHS.

(3) An applicant or an enrollee denied a request for an exemption by HHS under 45 C.F.R. 155.625(b) may appeal the decision to HHS.

Section 14. Individual Appeal Release of Records.

(1) An appellant shall have access to the information used by the KHBE to determine his or her eligibility.

(2) An appellant shall have access to his or her appeal record:

- (a) Upon written request;
- (b) At a place and time convenient to the appellant; and

(c) Subject to all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information.

(3) The public shall have access to an appeal decision, subject to all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information.

ROBERT PUTT, Executive Director

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 12, 2021

FILED WITH LRC: March 15, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 24, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 17, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Advisor, 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: Melea Rivera and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to appeals of eligibility determinations for KHBE participation and insurance affordability programs on the Kentucky Health Benefit Exchange pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to develop the policies and procedures that will be used for an individual seeking to appeal a decision of the Kentucky Health Benefit Exchange regarding

eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by providing information so that individuals seeking to file an appeal of an eligibility determination issued by the Kentucky Health Benefit Exchange are informed of the steps necessary to file an appeal and the subsequent actions of the Cabinet related to the appeal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed information to individuals seeking to file an appeal of an eligibility determination issued by the Kentucky Health Benefit Exchange so that they may avail themselves of their rights to an appeal

(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 government affected by this administrative regulation: This administrative regulation will affect approximately 500 individuals that may file an appeal of their determination of eligibility issued by the Kentucky Health Benefit Exchange.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual seeking to file an appeal of a determination of eligibility issued by the Kentucky Health Benefit Exchange must file a request for an appeal pursuant to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each individual that may request an appeal of an eligibility determination issued by the Kentucky Health Benefit Exchange by providing detailed instructions regarding the appeals process.

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

(a) Initially: The estimated cost to implement a state-based exchange will be \$5,000,000 to the state but will result in significant savings to Kentuckians through reductions in health insurance premiums.

(b) On a continuing basis: The estimated cost will be \$2,000,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Division of Health Benefit Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation

applies equally to all individuals and entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate, 42 U.S.C. 18031, 26 C.F.R. 1.36B-4, 45 C.F.R. Parts 155, 156

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to an appeal of a determination of eligibility issued by the Kentucky Health Benefit Exchange, pursuant to, and in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a QHP in Kentucky. An Exchange must develop policies and procedures related to individual appeals of eligibility determinations issued by KHBE.

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. This administrative regulation does not impose stricter requirements than those required by the federal mandate

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 affects the Office of Health Data and Analytics, Division of Health Benefit Exchange within the Cabinet for Health and Family Services and the Department of Insurance within the Public Protection and Regulation Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.050, 13B.080, 13B.090, 13B.110, 13B.120, 13B.140, 42 U.S.C. 18031, 26 C.F.R. 1.36B-4, 45 C.F.R. Parts, 155, 156.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This 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.

(c) How much will it cost to administer this program for the first year? Approximately \$2,000,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$2,000,000.

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

Revenues (+/-):
Expenditures (+/-): \$2,000,000
Other Explanation:

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

902 KAR 4:150. Enhanced HANDS services in response to declared national or state public health emergency.

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)(a) 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.

(b) These services include those listed in 902 KAR 4:120, Section 2(4), 2(5), and 4.

(c) Verbal and written consent shall be provided for each child in a shared household. For example, if the family has twins, verbal and written consent shall be provided for each baby.

(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: March 3, 2021

FILED WITH LRC: March 5, 2021 at 3:44 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 24, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 17, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2021. Send written notification of intent to attend the public hearing or written

comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for HANDS home visitation services to be provided 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 the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160. 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.

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

902 KAR 30:210. Enhanced early intervention services in response to declared national or state public health emergency.

RELATES TO: KRS 200.650-200.676, 34 C.F.R. Part 99, 34 C.F.R. Part 303, 45 C.F.R. Part 160, 20 U.S.C. 1431-1444

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provisions for providing tele-intervention services 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-intervention service" means early intervention services provided through the internet with both video and audio features and with the early intervention provider and family both present in real time.

Section 2. Enhanced early intervention services in response to a declared national or state public health emergency. (1) Early intervention services and requirements may be enhanced to allow for tele-intervention services if a national or state public health emergency has been declared.

(2) Early intervention services that are otherwise designated as face-to-face in accordance with 902 KAR 30:160 may be provided through tele-intervention with informed parental consent if:

(a) Informed parental consent is obtained verbally for the purposes of tele-intervention services;

(b) Written consent is received by the point of entry within ten (10) days of the verbal consent; and

(c) The date verbal consent is obtained is documented in the child's electronic record.

(3) Providers utilizing tele-intervention services shall take all necessary steps to maintain confidentiality with 34 C.F.R. Part 99, 34 C.F.R. 303.402, and 45 C.F.R. Part 160.

(4) Tele-intervention services shall be reimbursed at the usual and customary rate as established in 902 KAR 30:200, Section 2.

(5) Tele-intervention services shall revert to face-to-face service delivery methods following the end of the declared national or state public health emergency.

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

APPROVED BY AGENCY: March 3, 2021

FILED WITH LRC: March 5, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 24, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 17, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed

(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 administrative regulation, 907 KAR 3:300, that allows 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, the Department for Medicaid Services, and local health departments providing HANDS services.

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:

administrative regulation until May 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for providing early intervention services through tele-intervention methods during a declared national or state public health emergency

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure early intervention 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 200.660(7) authorizes the cabinet to develop procedures to ensure that early intervention services identified on the individualized family service plan are provided to eligible infants and toddlers with disabilities and their families in a timely manner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will help to ensure early intervention services can continue by allowing alternative methods for service delivery during the declared national or state public health emergency.

(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 approximately 5,400 children receiving early intervention services statewide. There are approximately 1,300 enrolled early intervention providers, including service coordinators.

(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-intervention 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-intervention services meets the confidentiality requirements of 34 C.F.R. Part 99, 34 C.F.R. Part 303, and 45 C.F.R. Part 160. Parents will need to make themselves available for the tele-intervention 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 early intervention services through tele-intervention 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 early intervention services. Providing services through tele-intervention 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-intervention services 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 administrative regulation, 907 KAR 3:300, that allows 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 early intervention services provided through tele-intervention methods. Other sources of funding include private insurance for reimbursement, and 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, and the Department for Medicaid Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 200.660, 34 C.F.R. Part 99, 34 C.F.R. Part 303, 45 C.F.R Part 160, 20 U.S.C. 1431-1444.

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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. Part 99, 34 C.F.R. Part 303, 45 C.F.R. Part 160, and 20 U.S.C. 1431-1444

2. State compliance standards. Parents of children enrolled in early intervention services have certain rights as protected by the Individuals with Disability Education Act and the Family Education Rights and Privacy Act. The state must ensure all services are provided in compliance with these standards. As a business associate of the Department for Public Health, early intervention providers must ensure compliance with the Health Insurance Portability and Accountability Act of 1996 for the submission of electronic billing records.

3. Minimum or uniform standards contained in the federal mandate. In order to receive early intervention funding, the state must assure the federal Office of Special Education Programs compliance with the requirements for parental consent, prior written notice, and the confidentiality of the early intervention record. The state must also ensure the early intervention record is in compliance with the Health Insurance Portability and Accountability Act of 1996.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, the requirements of this administrative regulation are consistent with the requirements of 34 C.F.R. Part 99, 34 C.F.R. Part 303, and 45 C.F.R. Part 160.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable as no stricter standard, or additional or different responsibilities or requirements are imposed.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and
Intellectual Disabilities
Division of Behavioral Health
(New Administrative Regulation)

908 KAR 1:390. Voluntary Employer Substance Use Program (VESUP).

RELATES TO: KRS 222.215

STATUTORY AUTHORITY: KRS 222.215

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.215 requires the cabinet to promulgate administrative regulations to implement employer-facilitated access to substance use disorder treatment for employees who screen positive during an employment-related drug screening. This administrative regulation establishes a voluntary program in which employers may facilitate employee access to substance use disorder treatment, rather than terminate or refuse hire, and sets criteria for that program.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "Employer" is defined by KRS 222.215(1)(b).

Section 2. Voluntary Employer Substance Use Program (VESUP) policy. (1) An employer that elects to participate in VESUP shall have the following elements written in their workplace drug and alcohol policy:

- (a) Policy rationale and goals that include:
 - 1. Reason for policy;
 - 2. Intended outcomes of the policy; and
 - 3. How and with whom the policy was developed;
- (b) Expectations and compliance elements that include:
 - 1. When and where the policy applies;
 - 2. Employee positions the policy applies to;
 - 3. Expected employee behavior; and
 - 4. Prohibited behaviors and substances;
- (c) Drug screening procedures and guidelines, including:
 - 1. A list of screened substances;
 - 2. Screening facilities approved by the cabinet;

3. Number of times an employee shall be screened, including minimums and maximums; and

4. Screening confidentiality and privacy protocols;
(d) Resources for evidence-based substance use disorder prevention; and

(e) A process for identifying licensed substance use disorder treatment providers.

(2) An employer's VESUP policy shall be accessible upon request to all employees and the cabinet.

(3) Employee compliance with the employer's VESUP policy shall be a condition of employment.

Section 3. Employee participation in substance use disorder treatment.

(1) Employers participating in the VESUP shall require employee participation in licensed substance use disorder treatment services as a condition of employment to work within their area of expertise or professional licensure as applicable if:

(a) An employee screens positive during an employment-related drug screening; and

(b) A biopsychosocial clinical assessment performed by a licensed substance use disorder treatment provider determines the need for substance use treatment.

(2) If a licensed substance use disorder treatment provider determines via biopsychosocial clinical assessment that substance use disorder treatment is not necessary, the employee shall comply with the recommendations deemed appropriate by the clinical assessment as a condition of employment.

(3) An employee identified in subsection (1) of this section shall follow the treatment plan as written by the licensed substance use disorder treatment provider.

Section 4. Employer participation in substance use disorder treatment.

(1) An employer shall agree to allow the employee to follow the treatment plan written by a licensed substance use disorder treatment provider as described in Section 3(3) of this administrative regulation.

(2) An employer shall not penalize an employee for compliance with the treatment plan described in Section 3(3) of this administrative regulation.

Section 5. Records. (1) An employer shall secure all records and information concerning an employee's substance use screening and treatment.

(2) Records as specified in subsection (1) of this section shall include:

(a) Results of employee drug screens; and

(b) Documentation of employee participation and compliance in substance use disorder treatment services.

(3) Records specified in this section shall be maintained separately from the employee's personnel file.

(4) Records specified in this section shall be disclosed in accordance with KRS 222.215(6)(e).

Section 6. Program requirements. (1) An employee that violates the employer workplace drug and alcohol policy by screening positive during an employment-related drug screening, rather than being terminated or refusing hire, shall have the option to receive services from a licensed substance use disorder treatment provider for:

(a) An initial comprehensive biopsychosocial clinical assessment using a multidimensional assessment tool, that complies with the most current edition of the American Society of Addiction Medicine (ASAM) criteria to determine the appropriate level of care in accordance with 908 KAR 1:370, Section 18; and

(b) If deemed appropriate, creation of a written treatment plan pursuant to 908 KAR 1:370, Section 19.

(2) Employees specified in subsection (1) of this section who elect to participate in this program, shall provide their employer with signed consent authorizing the employer to receive documentation confirming employee participation and compliance with recommendations of the clinical assessment.

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(3) Employees specified in subsection (1) of this section shall be informed of all FDA-approved options to treat substance use disorder from the employer or the cabinet if referred by the employer.

Section 7. Referral information. Employers may find the following information at <http://dbhjd.ky.gov/>:

- (1) A list of some of the licensed substance use disorder treatment providers available;
- (2) Employer education on addressing substance use in the workplace; and
- (3) Screening facilities approved by the cabinet.

WENDY T. MORRIS, Commissioner
 ERIC C. FRIEDLANDER, Secretary
 APPROVED BY AGENCY: March 3, 2021
 FILED WITH LRC: March 4, 2021 at 1:08 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 24, 2021 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 May 17, 2021, 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 May 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Justin Dearing and Krista Quarles

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes a voluntary program in which employers may facilitate employee access to substance use disorder treatment, rather than terminate or refuse hire, and sets criteria for that program.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a voluntary program in which employers may facilitate employee access to substance use disorder treatment to comply with KRS 222.215.
 - (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 a voluntary program in which employers may facilitate employee access to substance use disorder treatment to comply with KRS 222.215.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing a voluntary program in which employers may facilitate employee access to substance use disorder treatment, rather than terminate or refuse hire, and sets criteria for that program.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
 - (b) The necessity of the amendment to this administrative

regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect any employer who volunteers for the program and all of their employees. This administrative regulation will also affect the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(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: Employers who volunteer for this program will have to allow access to substance use disorder treatment for employees who test positive for a drug screen. Employers will also have to abide by certain privacy restrictions, have written plans of operation, and drug screening procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will create no new or additional costs to regulated entities. The Department for Behavioral Health, Developmental and Intellectual Disabilities would incur additional costs to implement 2020 SB 191 to cover staffing, training, promotional material, and resource material development and dissemination. While it is difficult to assess how many employers might take advantage of the provisions of the bill, based on implementation of similar legislation in other states, we estimate the provision of at least one part-time (.5 FTE) BHDID/Program Administrator to help develop regulations, review employers' programs; provide technical assistance; and provide ongoing assessment of the programs' continued fidelity. Using a salary between minimum and midpoint for the required staff (in order to acquire experienced staff) with a fringe rate of 120%, estimated costs of the part-time (.5 FTE) BHDID Program Administrator would be \$66,000. An additional \$6,000 of operating would be required to meet the equipment, space, and travel needs of the Program Administrator. Lastly, due to staffing and time constraints, the development and dissemination of resource and training materials would be procured through contract at the estimated cost of \$260,000. This contract can be supported by time-limited federal funding through 9/30/2021. In total, the estimated annual impact would be \$332,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows for the potential treatment of employees with a substance use disorder, increasing employee retention and decreasing employee turnover. In addition, employers in this program reduce their liability for civil actions in accordance with KRS 222.215(8).

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

(a) Initially: It will cost this administrative body \$332,000 initially to implement this administrative regulation.

(b) On a continuing basis: There will be a continual cost of \$332,000 annually to administer this administrative regulation from this administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds will be used for the implementation and enforcement of this administrative regulation after 9/30/2021. Time-limited-federal funding will be used to pay for the contracts before 9/30/2021.

(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: The administrative regulation does not require an increase in fees or funding.

(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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? The administrative regulation does not apply tiering. The standards are applicable 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 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 222.215

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 new 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 new revenue.

(c) How much will it cost to administer this program for the first year? It will cost this administrative body \$332,000 initially to administer this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be a continual cost of \$332,000 annually to implement this administrative regulation from this administrative body.

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 March 8, 2021

Call to Order and Roll Call

The March meeting of the Administrative Regulation Review Subcommittee was held on Monday, March 8, 2021 at 10 a.m. In Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken. The minutes from the January 2021 meeting were approved.

Present were:

Members: Senators Julie Raque Adams, Alice Forgy Kerr, Stephen West, and David Yates. Representatives Randy Bridges, Deanna Frazier, David Hale, and Marylou Marzian.

LRC Staff: Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Eden Davis, Larry Hadley, Board of Pharmacy; Keith Poynter, Board of Physical Therapy; Nicole Bearse, Jay Miller, Board of Social Work; John Hardesty, Tom Veit, Real Estate Appraisers Board; Leah Cooper Boggs, Kevin Winstead, Board of Licensed Diabetes Educators; Brian Clark, Steven Fields, Department of Fish and Wildlife Resources; Dr. Katie Flynn, Clint Quarles, Department of Agriculture; Melissa Duff, Division for Air Quality; Amy Barker, Kiernyn Fannin, Department of Corrections; Kenny Bishop, Matthew Cole, Mary Cook, Virginia Day, Jon Johnson, Godwin Onodu, Larisa Plecha, Robin Snook, Department of Transportation; Todd Allen, Thomas Clouse, Elisa Hanley, Micki Ray, Matt Ross, Department of Education; Robin Maples, Chuck Stribling, Occupation Safety and Health; Dale Hamblin, Robert Swisher, Department of Workers' Claims; DJ Wasson, Department of Insurance; Jeb Pinney, Public Service Commission; Marc A. Guilfoil, Dr. Bruce Howard, Jennifer Wolsing, Horse Racing Commission; David Moore, Rick Rand, Benjamin Siegel, Department of Housing, Buildings, and Construction; Sarah Cooper, Donna Little, Medical Review Panels; Angela Billings, Julie Brooks, Department for Public Health; Kara Daniel, Adam Mather, Office of Inspector General; Veronica Judy-Cecil, Leslie Hoffman, Jonathan Scott, Department for Medicaid Services; Michele Blevins, Justin Dearing, Department for Behavioral Health, Developmental and Intellectual Disabilities; Laura Begin, Dr. Sarah Vanover, Department for Community Based Services and Brian Tharpe, Commercial Plumbing Coordinator.

The Administrative Regulation Review Subcommittee met on Monday, March 8, 2021, and submits this report:

Administrative Regulations Reviewed by this Subcommittee:

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:410E. Ordering and administering vaccinations. Eden Davis, general counsel, and Larry Hadley, executive director, represented the board.

In response to a question by Co-Chair West, Ms. Davis stated that federal requirements for pharmacist-administered vaccinations were revised several times. A recent federal revision occurred after this emergency administrative regulation was filed and in effect. The new process established by Senate Bill 2 from the 2021 Regular Session of the General Assembly allowed this emergency administrative regulation to be amended, rather than withdrawn and refiled, in order to comply with the federal changes.

Without objection, and with agreement of the agency, the following amendments were approved by the Joint House and Senate Standing Committee meeting on Health and Welfare, February 22, 2021: (1) to delete the provision that pharmacy technicians must be certified; (2) to revise immunization training requirements to broaden the pool of vaccinators; (3) to clarify that pharmacy interns and technicians may administer vaccinations under the general supervision of a pharmacist; and (4) to make conforming amendments.

Board of Physical Therapy

201 KAR 22:170. Physical Therapy Compact Commission. Martin Poynter, general counsel, represented the board.

In response to a question by Co-Chair West, Mr. Poynter stated that this administrative regulation was making non-substantive, technical corrections. There were no public comments.

Board of Social Work

201 KAR 23:070. Qualifying education and clinical practice experience under supervision. Justin Miller, chair, and Nicole Bearse, counsel, represented the board.

In response to questions by Co-Chair Hale, Mr. Miller stated that, pertaining to the reduction in clinical supervision hours, Kentucky had unusually high clinical supervision hour requirements compared to other states. Additionally, there did not seem to be a correlation between quality of service and clinical supervision hours. The reduction in clinical supervision hours created a more

efficient process for moving members into independent practice in order to meet the statewide shortages. Self-evaluation of the supervision process was added to allow the supervisor and the supervisee to assess the value of the supervision hours in order to promote quality, not just quantity of the supervision hours, for the purpose of promoting good clinical practice.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 and 12 to clarify that the training and refresher courses shall be board approved; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 4, 5, 8 through 10, and 13; and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Real Estate Appraisers Board

201 KAR 30:040. Professional standards of practice and conduct. John Hardesty, general counsel, and Tom Veit, board administrator, represented the board.

In response to a question by Representative Frazier, Mr. Hardesty stated that this administrative regulation did not relate to any legislation currently being considered by the General Assembly.

A motion was made and seconded to approve the following amendments: to amend Section 5 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 30:190. Certification and licensing requirements.

Board of Licensed Diabetes Educators

201 KAR 45:130. Continuing education. Leah Boggs, executive advisor, represented the board.

TOURISM, ARTS, AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:221 & E. Waterfowl seasons and limits. Brian Clark, deputy commissioner; Steven Fields, staff attorney; and Chris Garland, wildlife division director, represented the department.

In response to a question by Co-Chair West, Mr. Garland

stated that a scaup was a diving bluebill duck associated with deep water.

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 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.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Agriculture Tax Credits

302 KAR 4:010. Renewable Chemical Production Program. Dr. Katie Flynn, state veterinarian, and Clint Quarles, attorney, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 and 5 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Livestock, Poultry, and Fish

302 KAR 22:150. Cervids.

In response to questions by Representative Frazier, Mr. Quarles stated that this administrative regulation was amended to address situations in which a cervid escaped captivity. Management of an escaped cervid was based on the amount of time of escape and a determination by the state veterinarian. A deceased cervid would be tested for Chronic Wasting Disease. Movement of cervids required a permit; therefore, cervids were essentially always quarantined. Dr. Flynn stated that cervid herds were certified, routine surveillance was conducted for Chronic Wasting Disease and other diseases, and biosecurity management practices were used. Indiana was the primary state from which Kentucky received cervids; however, states that complied with Kentucky standards could apply to send cervids under very stringent requirements. The movement of cervids into Kentucky was under seal so that cervids could not comeing.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3 through 7, 9, 14, 16, 19, and 20 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: New Source Performance Standards

401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources. Melissa Duff, director, represented the department.

In response to a question by Co-Chair West, Ms. Duff stated that these administrative regulations did not change air quality standards. Sources were already federally required to comply with these standards.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph 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.

General Standards of Performance

401 KAR 63:002. 40 C.F.R. Part 63 national emission standards for hazardous pollutants.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph 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.

JUSTICE AND PUBLIC SAFETY CABINET: Department of

Corrections: Office of the Secretary

501 KAR 6:080 & E. Department of Corrections manuals. Amy Barker, assistant general counsel, and Kierny Fannin, division director, represented the department.

In response to questions by Co-Chair West, Ms. Barker stated that this administrative regulation was filed as an emergency because it impacted public health through requirements pertaining to the placement of inmates. Additionally, the emergency was related to a new prison that was opening.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Motor Carriers

601 KAR 1:113. Transportation Network Company. Kenny Bishop, legislative director; Matthew Cole, commissioner; Mary Cook, assistant director; Virginia Day, section supervisor; Jon Johnson, assistant general counsel; Godwin Onodu, division director; Larisa Plecha, staff attorney; and Robin Snook, branch manager, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4, 8, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Certification of Title

601 KAR 23:030. Motor vehicle speed title process exceptions.

In response to questions by Co-Chair West, Mr. Onodu stated that the speed title process was being amended to establish an exception to the forty-eight (48) hour requirement for the department to process a title. The exception would cover situations in which, for example, a title application was submitted late on a Friday or before a holiday, which made it very difficult for the department to comply with the deadline. Under the exception, a speed title would be processed the next workday after a weekend or holiday.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Education: Pupil Transportation

702 KAR 5:080. Bus drivers' qualifications, responsibilities, and training. Todd Allen, general counsel, and Micki Ray, policy advisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 8 and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Academic Standards

704 KAR 8:110. Kentucky Academic Standards for World Language.

In response to a question by Representative Marzian, Ms. Ray stated that these standards were the minimum World Language requirements for a course for grades K through 12.

A motion was made and seconded to approve the following amendment: to amend the STATUTORY AUTHORITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

LABOR CABINET: Department of Workplace Standards: Occupational Safety and Health

803 KAR 2:010. Board procedures. Robin Maples, occupational safety and health standards specialist, and Chuck Stribling, occupational safety and health standards coordinator, represented the department.

In response to a question by Co-Chair West, Mr. Stribling stated that these procedures governed the process to be followed by the Standards Board. The amendments were technical and

non-substantive.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Workers' Claims

803 KAR 25:300. Mediation Program. Dale Hamblin, assistant general counsel, and Robert Swisher, commissioner, represented the department.

In response to questions by Co-Chair Hale, Mr. Hamblin stated that changes to this administrative regulation were in accordance with KRS 342.276, which authorized a formal process for parties involved in workers' compensation litigation to request that claims be referred for mediation in order to expedite the process. Once a claim was filed and assigned to an administrative law judge, parties could opt for mediation to attempt resolution of the claim. This was an adjunct to the existing litigation claims process. This change provided an opportunity to attempt a faster mediated settlement, rather than pursuing the claim through the entire traditional claims process.

In response to a question by Co-Chair West, Mr. Hamblin stated that this change was made as a direct result of KRS 342.276 and was not a cabinet-initiated procedure change.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors, and Adjustors

806 KAR 9:360. Pharmacy benefit manager license. DJ Wasson, deputy commissioner, represented the department.

In response to a question by Co-Chair West, Ms. Wasson stated that this administrative regulation was the result of legislation. Amendments were clarifications to the program.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph, Sections 1 through 4, and material incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:056. Fuel adjustment clause. Jeb Pinney, acting general counsel, represented the commission.

In response to questions by Co-Chair West, Mr. Pinney stated that ongoing litigation related to this program involved a constitutional challenge pertaining to Section 3(5) of this administrative regulation. This case was considered by the Eastern District for the U.S. Courts and was brought by an Illinois coal company. The company asserted that removing coal severance taxes of any jurisdiction from considerations pertaining to the fuel adjustment clause violated the Dormant Commerce Clause of the U.S. Constitution by creating an unfair advantage in that some states, including Illinois, did not have coal severance taxation. Prior to the inclusion of Section 3(5) of this administrative regulation, the commission did not consider coal severance taxes in making determinations regarding the fuel adjustment clause. The fuel adjustment clause allowed electricity-generating utilities to consider cost recovery on a monthly basis. If fuel costs were above a certain limit, then the electric utility could issue a charge on customers' bills. If fuel costs were below a certain limit, then the electric utility could issue a credit on customers' bills. The commission traditionally had considered related costs other than just fuel itself, such as transportation. In 2019, in response to a joint resolution from the General Assembly, the commission amended several provisions of the fuel adjustment clause, including Section 3(5) of this administrative regulation, to incentivize coal use in electricity-generating utilities. After initial concerns were raised about the constitutionality of the

coal severance tax usage in determining the reasonableness of fuel costs for purposes of the fuel adjustment clause, the commission sought an opinion from the Kentucky Attorney General. The Attorney General's opinion was that the situation was constitutional. The Illinois coal company proceeded to file a challenge in March 2020. The commission prevailed against a motion for temporary injunction; however, as the case proceeded, the commission determined that a settlement might be the best option due to the possible costs if the plaintiff were successful. The settlement included removing the language in Section 3(5) of this administrative regulation. Without that language, coal severance taxes would be a non-differentiated part of overall fuel costs under consideration to determine the reasonableness of costs for purposes of the fuel adjustment clause. The commission retained plenary authority in considering the reasonableness of costs.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Horse Racing Commission: General

810 KAR 2:020. Thoroughbred and flat racing officials. Marc Guilfoil, executive director; Dr. Bruce Howard, equine medical director; and Jennifer Wolsing, general counsel, represented the commission.

Flat and Steeplechase Racing

810 KAR 4:010. Horses.

A motion was made and seconded to approve the following amendment: to amend Section 3(3)(b) to permit verification by a successor to the Thoroughbred Racing Protective Bureau. Without objection, and with agreement of the agency, the amendment was approved.

810 KAR 4:030. Entries, subscriptions, and declarations.

Medication Guidelines

810 KAR 8:060. Post-race sampling and testing procedures.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:150. Inspections and tests. David Moore, division director; Rick Rand, commissioner; and Benjamin Siegel, general counsel, represented the department. Brian Tharpe, commercial plumbing coordinator, Kentucky Association of Master Contractors, appeared in support of this administrative regulation.

Co-Chair Hale and Representative Frazier thanked the department for making further amendments to this administrative regulation. Mr. Siegel thanked Representative Frazier for her helpful recommendations for amendment.

In response to a question by Co-Chair West, Mr. Tharpe stated that the Kentucky Association of Master Contractors supported this administrative regulation. Without objection, and with agreement of the agency, the following amendments were approved by this subcommittee at the January 13, 2021 meeting: to amend Section 3 to: (1) comply with the drafting requirements of KRS Chapter 13A; and (2) clarify due process procedures.

A motion was made and seconded to approve the following amendments: to amend Section 3 to: (1) disallow photographs (video only) for virtual inspections; (2) clarify that medical gas installations and installations that require multiple visits from inspectors are examples of work that is too complex for virtual inspection; (3) clarify that inspections in areas of inconsistent or unreliable cellular or internet connectivity, poor video quality, and technical issues that would prevent clear inspection, are examples of situations that are not feasible or practical for virtual inspection; and (4) clarify that underground plumbing installations that require more than one (1) inspection and final installations on new construction are examples of situations that would not provide adequate inspection if done virtually. Without objection, and with agreement of the agency, the amendments were

approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Secretary: Medical Review Panels

900 KAR 11:011. Repeal of 900 KAR 011:010. Donna Little, deputy executive director, Office of Legislative and Regulatory Affairs, represented the cabinet.

Department for Public Health: Sanitation

902 KAR 10:010. Public restrooms. Angela Billings, section supervisor, and Julie Brooks, regulation coordinator, represented the department.

In response to a question by Co-Chair West, Ms. Brooks stated that most of the administrative regulations in this package had not been updated since the 1990s. Many of the changes were for compliance with KRS Chapter 13A. Ms. Billings stated that 902 KAR 10:010 authorized local health departments to inspect public restrooms for which there was no active permit. There were no associated fees. 902 KAR 10:110 had not been updated since 1992; therefore, the existing permitting fee was inadequate. 902 KAR 10:140 represented a certified septic system installer program that had been nationally recognized and duplicated by other states. Other administrative regulations in this package updated inspection provisions.

902 KAR 10:110. Issuance of on-site sewage disposal system permits.

902 KAR 10:131. Repeal of 902 KAR 010:060 and 902 KAR 010:130.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to cross reference 902 KAR 10:110 and 902 KAR 10:170, into which some of the provisions are relocated from the administrative regulations being repealed. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 10:140. On-site sewage disposal system installer certification program standards.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 10:150. Domestic septage disposal site approval procedures.

In response to a question by Co-Chair West, Ms. Billings stated that this administrative regulation limited a farmer to spreading up to 2,000 gallons of septage from that farm alone and not including other septage from, for example, other farms without first obtaining a permit.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 10:160. Domestic septage disposal site operation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 10:170. Septic tank servicing.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, 5, and 6 to comply with the drafting requirements of KRS Chapter

13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Inspector General: Health Services and Facilities

902 KAR 20:160 & E. Chemical dependency treatment services and facility specifications. Adam Mather, inspector general, and Kara Daniel, deputy inspector general, represented the office.

In response to a question by Representative Frazier, Mr. Mather stated that an emergency administrative regulation was required because the opioid epidemic had been exacerbated by the coronavirus (COVID-19) pandemic. Additionally, federal funding would be impacted if there were a delay of implementation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 20:440 & E. Facilities specifications, operation and services; residential crisis stabilization units.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement, the amendment was approved.

Department for Public Health: Food and Cosmetics

902 KAR 45:160. Kentucky food and cosmetic processing, packaging, storage, and distribution operations. Julie Brooks, regulation coordinator, represented the department.

In response to a question by Co-Chair Hale, Ms. Brooks stated that this administrative regulation did not affect fees.

902 KAR 45:190. Hemp-derived cannabidiol products and labeling requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 2 to: (a) add two (2) definitions; and (b) clarify one (1) definition; and (3) to amend Section 3 to delete a redundant labeling font requirement. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Behavioral Health

907 KAR 15:070 & E. Coverage provisions and requirements regarding services provided by residential crisis stabilization units. Veronica Judy – Cecil, senior deputy commissioner; Leslie Hoffman, chief behavioral health officer; and Jonathan Scott, regulatory and legislative advisor, represented the department.

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.

907 KAR 15:080 & E. Coverage provisions and requirements regarding chemical dependency treatment center services.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Mental Health

908 KAR 2:270. Community behavioral health training. Michele Blevins, assistant director, and Justin Dearing, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to: (1) delete language that repeated statutory provisions; and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and

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with agreement of the agency, the amendments were approved.

Department for Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 3:010. Definitions. Laura Begin, regulation coordinator, and Dr. Sarah Vanover, division director, represented the department.

In response to questions by Co-Chair West, Ms. Begin stated that these changes were necessary for compliance with federal requirements. Unused SNAP benefits would be removed from future benefit eligibility, and the unused duration was being reduced from twelve (12) to nine (9) months. The department was required to give ample notification that benefits were being removed. Undocumented immigrants were not eligible to receive benefits unless the person were sponsored.

In response to a question by Representative Yates, Ms. Begin stated that benefits were not removed due to lack of housing; however, lack of housing might cause the department notification to the recipient to be delayed.

921 KAR 3:045. Issuance procedures.

Daycare

922 KAR 2:120. Child-care center health and safety standards.

922 KAR 2:230. Director's Credential.

922 KAR 2:240. Kentucky Early Care and Education Trainer's Credential and training approval.

922 KAR 2:250. Commonwealth Child Care Credential.

The following administrative regulations were deferred or removed from the March 8, 2021, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:380. Board authorized protocols.

Board of Social Work

201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration.

DEPARTMENT OF AGRICULTURE: Regulation and Inspection; Motor Fuel

302 KAR 79:011. Motor fuel quality testing and inspection program.

302 KAR 79:012. Motor fuel quality standards and specifications.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Existing Source Standards

401 KAR 61:036. Emission guidelines and compliance times for municipal solid waste (MSW) landfills.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration

601 KAR 2:231. Repeal of 601 KAR 002:030.

601 KAR 2:232 & E. Kentucky Ignition Interlock Program.

LABOR CABINET: Department of Workplace Standards: Occupational Safety and Health

803 KAR 2:021. Identification, classification and regulation of

potential occupational carcinogens.

803 KAR 2:050. Scope.

803 KAR 2:080. Advance notice of inspections.

803 KAR 2:090. Complaint inspections.

803 KAR 2:096. Repeal of 803 KAR 002:095 and 803 KAR 002:430.

803 KAR 2:100. Imminent danger.

803 KAR 2:115. Penalties.

803 KAR 2:240. Time for filing discrimination complaint.

803 KAR 2:314. Machinery and machine guarding.

803 KAR 2:413. Helicopters, hoists, elevators, and conveyers.

803 KAR 2:420. Blasting and use of explosives.

Department of Workers' Claims

803 KAR 25:091. Workers' compensation hospital fee schedule.

803 KAR 25:092. Workers' compensation pharmacy fee schedule.

803 KAR 25:170. Filing of claims information with the Office of Workers' Claims.

803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination.

803 KAR 25:185. Procedure for E-mail notification of cancellation or removal of location of specific workers' compensation coverage.

PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors, and Adjustors

806 KAR 9:025. Licensing process.

Trade Practices and Frauds

806 KAR 12:120. Suitability in annuity transactions.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Radon

902 KAR 95:040. Radon Contractor Registration Program.

Department for Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 3:035. Certification process.

Daycare

922 KAR 2:410E. Enhanced requirements for certified and licensed child care and limited duration child care programs as result of a declared state of emergency.

The subcommittee adjourned at 11:40 a.m. The next meeting of this subcommittee is tentatively scheduled for April 13, 2021, 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.

NONE

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

J - 2

Lists all administrative regulations published or continuing through the KRS Chapter 13A review process during this Register year. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other actions that may affect the regulation. NOTE: Regulations listed with a “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.

KRS Index

J - 15

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

J - 29

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this Register year.

Technical Amendment Index

J - 30

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

J- 31

A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. & Page No.	Effective Date	Regulation Number	Ky.R. & Page No.	Effective Date
Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of <i>Register</i> year 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 <i>Register</i> 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.				
<hr/>					
EMERGENCY ADMINISTRATIVE REGULATIONS					
NOTE: Pursuant to KRS 13A.190, emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. This index reflects the KRS Chapter 13A-established expiration dates; however, expiration dates may be impacted by 2021 Regular Session legislation, including: House Joint Resolution 77 ; KRS Chapter 39A, as amended by Senate Bill 1 ; and by KRS Chapters 13A and 214, as amended by Senate Bill 2 .					
009 KAR 001:040E	47 Ky.R. 8	6-9-2020	201 KAR 035:080E	47 Ky.R. 1895	3-5-2021
Replaced	91	1-5-2021	301 KAR 002:221E	47 Ky.R. 1184	10-30-2020
010 KAR 001:011E	46 Ky.R. 2863	4-22-2020	501 KAR 001:040E	46 Ky.R. 1780	10-21-2019
Replaced	47 Ky.R. 517	12-1-2020	Replaced	2663	8-4-2020
030 KAR 008:005E	46 Ky.R. 2206	1-3-2020	501 KAR 001:071E	46 Ky.R. 1786	10-21-2019
Replaced	47 Ky.R. 35	8-20-2020	Expired		7-17-2020
031 KAR 004:190E	46 Ky.R. 2865	5-5-2020	501 KAR 006:080E	47 Ky.R. 1186	11-2-2020
Withdrawn		6-22-2020	601 KAR 002:232E	47 Ky.R. 247	6-30-2020
031 KAR 004:191E	47 Ky.R. ***	6-22-2020	702 KAR 001:190E	47 Ky.R. 503	8-12-2020
Withdrawn		7-13-2020	702 KAR 003:270E	47 Ky.R. 254	7-14-2020
031 KAR 004:192E	47 Ky.R. 678	8-28-2020	702 KAR 007:125E	47 Ky.R. 258	7-14-2020
Withdrawn		10-2-2020	702 KAR 007:140E	47 Ky.R. 505	8-12-2020
031 KAR 004:193E	47 Ky.R. 893	10-2-2020	787 KAR 001:350E	46 Ky.R. 2867	5-1-2020
Withdrawn		11-2-2020	Withdrawn		7-22-2020
031 KAR 004:194E	47 Ky.R. 1180	11-2-2020	800 KAR 001:010E	46 Ky.R. 2872	5-12-2020
Withdrawn		1-15-2021	Expired		2-6-2021
101 KAR 002:095E	47 Ky.R. 172	1-29-2021	802 KAR 001:010E	47 Ky.R. 684	9-2-2020
101 KAR 002:120E	46 Ky.R. 1771	10-22-2019	802 KAR 002:010E	47 Ky.R. 687	9-2-2020
Replaced	2686	6-2-2020	802 KAR 003:010E	47 Ky.R. 691	9-2-2020
101 KAR 002:210E	47 Ky.R. 682	9-15-2020	803 KAR 002:180E	47 Ky.R. 1897	3-10-2021
101 KAR 006:010E	47 Ky.R. 246	7-15-2020	803 KAR 002:320E	47 Ky.R. 1527	1-13-2021
105 KAR 001:149E	46 Ky.R. 1775	11-15-2019	803 KAR 025:089E	47 Ky.R. 264	7-1-2020
Replaced	2391	6-2-2020	Replaced	1217	3-2-2021
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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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142.115	103 KAR 001:160	158.6451	703 KAR 005:270
142.400	103 KAR 001:160		704 KAR 003:303
142.402	103 KAR 001:160		704 KAR 008:090
143.020	807 KAR 005:056		704 KAR 008:100
150.010	301 KAR 002:221		704 KAR 008:110
150.025	301 KAR 002:221	158:6453	703 KAR 005:270
150.305	301 KAR 002:221		703 KAR 005:280
150.330	301 KAR 002:221		704 KAR 003:303
150.340	301 KAR 002:221		704 KAR 008:110
150.730-150.735	302 KAR 022:150	158.6455	703 KAR 005:270
150.990	301 KAR 002:221		703 KAR 005:280
151	922 KAR 002:120	158.649	701 KAR 008:020
156.035	702 KAR 003:270E	158.782	703 KAR 005:280
156.060	704 KAR 008:100	158.791	704 KAR 008:100
156.070	702 KAR 003:270E	159.010	702 KAR 007:125E
	702 KAR 007:065	159.030	702 KAR 007:125E
	704 KAR 003:303	159.035	702 KAR 007:125E
	704 KAR 008:090	159.140	702 KAR 007:125E
	704 KAR 008:100		922 KAR 001:330
	704 KAR 008:110	159.170	702 KAR 007:125E
156.095	704 KAR 003:035	160.1590	701 KAR 008:020
156.101	704 KAR 003:325	160.1591	701 KAR 008:020
156.160	702 KAR 001:180	160.1592	701 KAR 008:020
	702 KAR 004:090	160.1593	701 KAR 008:020
	702 KAR 005:080	160.1594	701 KAR 008:020
	704 KAR 003:303	160.1595	701 KAR 008:020
	704 KAR 003:305	160.1596	701 KAR 008:020
	704 KAR 008:090	160.1597	701 KAR 008:020
	704 KAR 008:110	160.1598	701 KAR 008:020
156.850	704 KAR 008:090	160.1599	701 KAR 008:020
	704 KAR 008:100	160.290	702 KAR 001:190E
157.320	702 KAR 003:270E		704 KAR 003:303
	702 KAR 007:125E		704 KAR 008:090
	702 KAR 007:140E		704 KAR 008:100
157.350	702 KAR 007:125E		704 KAR 008:110
	702 KAR 007:140E	160.346	703 KAR 005:280
157.360	702 KAR 003:270E	160.380	702 KAR 007:065
	702 KAR 007:125E	160.445	702 KAR 007:065
157.370	702 KAR 003:270E	160.470	702 KAR 003:270E
157.390	702 KAR 003:270E	160.476	702 KAR 003:270E
157.410	702 KAR 003:270E	160.613	103 KAR 001:160
157.430	702 KAR 003:270E	160.614	103 KAR 001:160
157.440	702 KAR 003:270E	160.615	103 KAR 001:160
157.615	702 KAR 003:270E	161.011	702 KAR 005:080
157.620	702 KAR 003:270E	161.020	016 KAR 003:090
158.030	702 KAR 007:125E	161.027	016 KAR 003:090
	922 KAR 002:120	161.028	016 KAR 003:090
	922 KAR 002:410E		016 KAR 009:010
	922 KAR 002:415E	161.030	016 KAR 003:090
	922 KAR 002:450E		016 KAR 009:010
158.060	702 KAR 003:270E	161.048	016 KAR 009:010
	702 KAR 007:140E	161.141	701 KAR 008:020
158.070	701 KAR 005:150	161.152	702 KAR 001:190E
	701 KAR 008:020	161.200	702 KAR 007:125E
	702 KAR 007:125E	161.220	102 KAR 001:340
	702 KAR 007:140E	164.001	922 KAR 001:450
	704 KAR 003:035	164.020	013 KAR 001:020
158.100	702 KAR 007:125E		013 KAR 004:010
158.102	704 KAR 008:100	164.2847	922 KAR 001:450
158.135	702 KAR 003:270E		922 KAR 001:500

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164.505	017 KAR 001:040		902 KAR 010:030
164.507	017 KAR 001:040		921 KAR 004:116
164.512	017 KAR 001:040		922 KAR 001:330
164.515	017 KAR 001:040	194A.060	910 KAR 001:151
164.518	922 KAR 002:230		922 KAR 006:010
	922 KAR 002:240		921 KAR 004:116
	922 KAR 002:250	194A.070	908 KAR 001:400
164.945	013 KAR 001:020		921 KAR 004:116
	013 KAR 004:010	194A.700	910 KAR 001:151
164.946	013 KAR 001:020	196	501 KAR 006:070
	013 KAR 004:010		501 KAR 006:080
164.947	013 KAR 001:020		501 KAR 006:120
	013 KAR 004:010	197	501 KAR 006:070
164.992	013 KAR 001:020		501 KAR 006:080
	013 KAR 004:010		501 KAR 006:120
165A.320	013 KAR 001:020	197.010	500 KAR 006:220
165A.320-165A-450	013 KAR 004:010	198B.060	815 KAR 035:015
174.400-174.425	601 KAR 001:005	198B.090	815 KAR 035:015
186	922 KAR 002:120	198B.260	902 KAR 020:160
186.050	601 KAR 001:113	199.011	922 KAR 001:490
186.010	601 KAR 002:232		922 KAR 001:520
186.115	601 KAR 023:030		922 KAR 001:540
186.200	601 KAR 023:030		922 KAR 002:120
186.440	601 KAR 002:232		922 KAR 002:410E
186.442	601 KAR 002:232		922 KAR 002:415E
186.480	601 KAR 002:232		922 KAR 002:450E
186.531	601 KAR 002:232	199.462	922 KAR 001:490
186.560	601 KAR 002:232	199.470	922 KAR 001:540
186.570	601 KAR 002:232	199.475	922 KAR 001:540
186A.070	601 KAR 023:030	199.570	922 KAR 001:450
186A.120	601 KAR 023:030	199.585	922 KAR 001:540
186A.130	601 KAR 023:030	199.894	922 KAR 002:120
186A.165	601 KAR 023:030		922 KAR 002:230
186A.170	601 KAR 023:030		922 KAR 002:410E
186A.520	601 KAR 023:030		922 KAR 002:415E
189.125	922 KAR 002:120		922 KAR 002:450E
189.290	601 KAR 001:113	199.8951	922 KAR 002:120
189.540	702 KAR 005:080	199.896	922 KAR 002:120
189A.005	601 KAR 002:232		922 KAR 002:230
189A.010	601 KAR 001:113		922 KAR 002:240
	601 KAR 002:232		922 KAR 002:410E
189A.040	601 KAR 002:232		922 KAR 002:415E
189A.045	601 KAR 002:232	199.8941	922 KAR 002:250
189A.070	601 KAR 002:232	199.8962	922 KAR 002:120
189A.085	601 KAR 002:231		922 KAR 002:450E
	601 KAR 002:232	199.8982	922 KAR 002:240
189A.090	601 KAR 002:232	199.898	922 KAR 002:120
189A.103	601 KAR 002:232	200.115	922 KAR 001:520
189A.105	601 KAR 002:232	200.503	902 KAR 020:440
189A.107	601 KAR 002:232	200.650-200.676	902 KAR 030:210E
189A.200	601 KAR 002:232		902 KAR 030:210
189A.220	601 KAR 002:232	200.700	902 KAR 004:140E
189A.240	601 KAR 002:232		902 KAR 004:150E
189A.250	601 KAR 002:232		902 KAR 004:150
189A.340	601 KAR 002:231	202A.011	922 KAR 001:330
	601 KAR 002:232		922 KAR 001:580
189A.345	601 KAR 002:231	202A.241	902 KAR 020:160
	601 KAR 002:232	204.1-050	806 KAR 009:370
189A.350	601 KAR 002:232	205.010	910 KAR 001:151
189A.370	601 KAR 002:232	205.2005	921 KAR 003:025
189A.400	601 KAR 002:232	205.201	910 KAR 001:151
189A.410	601 KAR 002:232	205.203	910 KAR 001:151
189A.420	601 KAR 002:232	205.204	910 KAR 001:151
189A.440	601 KAR 002:232	205.455	910 KAR 001:151
194.540	201 KAR 032:060	205.460	910 KAR 001:151
194A.005	900 KAR 010:111	205.465	910 KAR 001:151
	902 KAR 045:160	205.510	907 KAR 003:005
	908 KAR 001:400	205.520	907 KAR 003:005
	922 KAR 001:330		907 KAR 003:250
	922 KAR 001:490		907 KAR 007:020
194A.010	921 KAR 004:116		907 KAR 015:070E
194A.030	902 KAR 004:110		907 KAR 015:080
194A.050	900 KAR 011:011	205.560	907 KAR 001:604
	902 KAR 004:030		907 KAR 003:005

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205.5605	907 KAR 003:010	211.972	902 KAR 010:170
	907 KAR 003:250		902 KAR 010:160
205.5606	907 KAR 007:020	211.974	902 KAR 010:170
	907 KAR 003:250		902 KAR 010:150
205.5607	907 KAR 007:020		902 KAR 010:160
	907 KAR 003:250	211.976	902 KAR 010:170
205.565	907 KAR 007:020		902 KAR 010:110
205.622	907 KAR 003:010		902 KAR 010:150
	907 KAR 003:005	211.981	902 KAR 010:160
205.6312	907 KAR 015:080		902 KAR 010:150
205.6485	907 KAR 001:604		902 KAR 010:160
205.712	907 KAR 001:604	211.990	902 KAR 010:170
205.8451	601 KAR 002:232		902 KAR 010:010
	907 KAR 001:604		902 KAR 010:110
	907 KAR 003:005		902 KAR 010:140
205.950	910 KAR 001:151		902 KAR 100:012
205.955	910 KAR 001:151	211.995	902 KAR 010:170
209.030	908 KAR 001:400	212.025	902 KAR 008:170
	910 KAR 001:151	212.120	902 KAR 008:170
209A	201 KAR 020:660	212.230	902 KAR 008:160
210.005	902 KAR 020:160	212.240	902 KAR 008:160
	902 KAR 020:440	212.245	902 KAR 008:160
210.053	908 KAR 002:270		902 KAR 008:170
210.290	910 KAR 002:060	212.890	902 KAR 008:160
210.366	201 KAR 032:060		902 KAR 008:170
	201 KAR 038:070	213.046	201 KAR 020:660
210.370-210.480	900 KAR 010:111	213.056	922 KAR 001:540
210.370-210.485	907 KAR 003:010	213.101	901 KAR 005:120
211.015	902 KAR 010:140	213.106	901 KAR 005:120
211.090	902 KAR 004:140E	214.010	902 KAR 002:020
	902 KAR 010:030		902 KAR 002:211E
211.180	902 KAR 002:020		902 KAR 002:220
	902 KAR 004:140E	214.020	902 KAR 002:220
	902 KAR 008:170	214.036	922 KAR 001:330
211.360	902 KAR 095:040	214.155	902 KAR 004:030
211.375	902 KAR 010:140	214.610	201 KAR 009:360
211.684	902 KAR 010:140	214.620	201 KAR 009:360
211.689	922 KAR 001:330	214.645	902 KAR 002:020
211.090	902 KAR 004:140E		902 KAR 002:211E
	902 KAR 004:030	215.520	902 KAR 002:020
	902 KAR 004:110	216.787	910 KAR 001:151
	902 KAR 004:150E	216B.010	902 KAR 020:160
	902 KAR 004:150	216B.010-216B.130	900 KAR 005:020
	902 KAR 050:050	216B.015	802 KAR 003:010
	902 KAR 050:090		900 KAR 006:030
211.1751	902 KAR 008:160		900 KAR 006:055
211.180	902 KAR 002:211E		900 KAR 006:060
	902 KAR 004:030		900 KAR 006:065
	902 KAR 004:110		900 KAR 006:080
	902 KAR 004:150E		900 KAR 006:090
	902 KAR 004:150		900 KAR 006:095
211.220	902 KAR 010:160		900 KAR 006:100
211.3103	902 KAR 095:040		900 KAR 006:105
211.350	815 KAR 035:015		900 KAR 006:115
211.350-211.380	922 KAR 002:120		902 KAR 002:020
211.357	902 KAR 010:110		902 KAR 020:160
211.360	902 KAR 010:110	216B.020	900 KAR 006:080
	902 KAR 010:150		900 KAR 006:090
	902 KAR 010:160		900 KAR 006:105
211.370	902 KAR 010:110		900 KAR 006:115
211.375	902 KAR 010:110	216B.040	900 KAR 006:060
211.380	902 KAR 010:110		900 KAR 006:065
211.684	922 KAR 001:490		900 KAR 006:090
211.689	902 KAR 004:150E	216B.050	902 KAR 020:440
	902 KAR 004:150	216B.061	900 KAR 006:080
211.840-211.852	902 KAR 100:012		900 KAR 006:095
211.9101	902 KAR 095:040		900 KAR 006:105
211.9107	902 KAR 095:040		900 KAR 006:110
211.9119	902 KAR 095:040		900 KAR 006:115
211.970	902 KAR 010:010	216B.062	900 KAR 006:060
	902 KAR 010:110		900 KAR 006:065
	902 KAR 010:140		900 KAR 006:090
	902 KAR 010:150	216B.065	900 KAR 006:110
	902 KAR 010:160	216B.066	900 KAR 006:110

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216B.085	900 KAR 006:065		902 KAR 050:090
216B.095	900 KAR 006:060	217C.070	902 KAR 050:050
	900 KAR 006:065	217C.100	902 KAR 050:031
	900 KAR 006:090		902 KAR 050:090
216B.105	803 KAR 025:091	217C.990	902 KAR 050:031
	902 KAR 020:160		902 KAR 050:050
	902 KAR 020:440		902 KAR 050:080
216B.332	900 KAR 006:115	218A.010	201 KAR 020:065
216B.400	201 KAR 020:411	218A.170	201 KAR 020:065
	802 KAR 003:010	218A.172	201 KAR 009:260
216B.990	900 KAR 006:080	218A.202	201 KAR 009:230
	900 KAR 006:090		902 KAR 020:160
	900 KAR 006:095	218A.205	201 KAR 009:081
	900 KAR 006:105		201 KAR 009:200
	900 KAR 006:110		201 KAR 009:210
	900 KAR 006:115		201 KAR 009:240
	902 KAR 020:160		201 KAR 009:260
217	922 KAR 002:120		201 KAR 009:360
217.005-217.205	902 KAR 045:160		201 KAR 020:161
217.005-217.215	902 KAR 050:032		201 KAR 025:011
217.015	201 KAR 002:225		201 KAR 025:021
	201 KAR 005:140		201 KAR 025:031
	902 KAR 045:110	222.005	908 KAR 001:400
	902 KAR 045:180	222.211	908 KAR 001:381
	902 KAR 045:190	222.215	908 KAR 001:390
	902 KAR 050:010	222.221	908 KAR 001:400
	902 KAR 050:031	223.010	902 KAR 010:030
217.025	902 KAR 045:110	223.020	902 KAR 010:030
	902 KAR 045:180	223.030	902 KAR 010:030
	902 KAR 045:190		902 KAR 010:036
	902 KAR 050:010	223.060	902 KAR 010:030
	902 KAR 050:033	223.080	902 KAR 010:030
	902 KAR 050:090	223.990	902 KAR 010:030
217.035	902 KAR 045:110	224.1-400	401 KAR 039:060
	902 KAR 045:180	224.10	401 KAR 039:060
	902 KAR 045:190	224.10-100	401 KAR 060:005
	902 KAR 050:010		401 KAR 061:036
	902 KAR 050:080		401 KAR 063:002
217.037	902 KAR 045:110	224.20-100	401 KAR 060:005
	902 KAR 045:180		401 KAR 061:036
	902 KAR 045:190		401 KAR 063:002
	902 KAR 050:080	224.20-110	401 KAR 060:005
217.045	902 KAR 050:033		401 KAR 061:036
217.085	902 KAR 045:110	224.20-120	401 KAR 063:002
	902 KAR 045:180		401 KAR 060:005
217.095	902 KAR 045:110		401 KAR 061:036
	902 KAR 045:180		401 KAR 063:002
217.125	902 KAR 045:110	224.40-310	401 KAR 039:060
217.155	902 KAR 045:110	224.46	401 KAR 039:060
	902 KAR 045:180	224.50-868	103 KAR 001:160
	902 KAR 045:190	224.60-145	103 KAR 001:160
217.182	201 KAR 005:140	224.99	401 KAR 039:060
217.215	201 KAR 002:171	224A.011	200 KAR 017:100
	902 KAR 045:160	224A.112	200 KAR 017:100
217.216	201 KAR 002:171	224A.11121	200 KAR 017:100
217.290-217.390	902 KAR 045:160	227.450	815 KAR 035:015
217.811	902 KAR 045:110	227.480	815 KAR 035:015
217.990-217.992	902 KAR 045:160	227.489	815 KAR 035:015
217B	302 KAR 050:021	227.491	815 KAR 035:015
	302 KAR 050:045	227.492	815 KAR 035:015
	302 KAR 050:056	227.495	815 KAR 035:015
217C	902 KAR 050:120	230	810 KAR 002:001
217C.010-217C.990	902 KAR 050:032		810 KAR 003:001E
	902 KAR 050:033		810 KAR 003:001
	902 KAR 050:040		810 KAR 004:001E
217C.010	902 KAR 050:031		810 KAR 004:001
	902 KAR 050:050		810 KAR 006:001E
217C.020	902 KAR 050:031		810 KAR 006:001
217C.030	902 KAR 050:010	230.210	810 KAR 005:001E
	902 KAR 050:080		810 KAR 005:001
217C.050	902 KAR 050:071		810 KAR 006:020
217C.060	902 KAR 050:031	230.215	810 KAR 002:020
	902 KAR 050:071		810 KAR 003:020
	902 KAR 050:080		810 KAR 004:010

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	810 KAR 004:030		810 KAR 006:020
	810 KAR 005:001E		810 KAR 006:030
	810 KAR 005:001		810 KAR 008:030
	810 KAR 005:080		811 KAR 001:251E
	810 KAR 006:020	230.3615	810 KAR 005:001E
	810 KAR 008:010		810 KAR 005:001
	810 KAR 008:020		810 KAR 006:010
	810 KAR 008:025		810 KAR 006:020
	810 KAR 008:030		810 KAR 006:030
	810 KAR 008:040		811 KAR 001:251E
	810 KAR 008:060	230.370	810 KAR 006:010
230.225	810 KAR 008:010		810 KAR 006:030
	810 KAR 008:020		810 KAR 008:010
	810 KAR 008:025		810 KAR 008:020
	810 KAR 008:040		810 KAR 008:025
230.240	811 KAR 002:120		810 KAR 008:040
	810 KAR 002:020		811 KAR 001:251E
	810 KAR 004:030	230.804	811 KAR 002:120
	810 KAR 008:010	230.398	810 KAR 005:080
	810 KAR 008:020		810 KAR 006:010
	810 KAR 008:025		810 KAR 006:030
	810 KAR 008:040		811 KAR 001:251E
230.260	810 KAR 008:060	230.750	810 KAR 006:010E
	810 KAR 002:260		810 KAR 006:010
	810 KAR 003:020		810 KAR 006:030
	810 KAR 004:030		811 KAR 001:251E
	810 KAR 005:001E	230.990	810 KAR 006:020
	810 KAR 005:001	234.320	103 KAR 001:160
	810 KAR 005:080	238.545	820 KAR 001:050
	810 KAR 006:020	238.550	820 KAR 001:050
	810 KAR 008:010	243.027	804 KAR 004:415
	810 KAR 008:020	243.028	804 KAR 004:415
	810 KAR 008:025	243.029	804 KAR 004:415
	810 KAR 008:030	243.030	804 KAR 004:415
	810 KAR 008:040	244.050	804 KAR 004:415
	810 KAR 008:060	244.440	804 KAR 004:415
230.265	810 KAR 008:010	244.585	804 KAR 004:415
	810 KAR 008:020	246	302 KAR 004:010
	810 KAR 008:025	246.030	302 KAR 022:150
	810 KAR 008:030	247.4453	902 KAR 050:010
230.280	810 KAR 008:060	247.453	902 KAR 050:010
	810 KAR 003:020	250.021	012 KAR 001:116
	810 KAR 005:080		012 KAR 001:140
230.290	810 KAR 003:020		012 KAR 001:155
	810 KAR 004:030	250.031	012 KAR 001:116
	810 KAR 005:080		012 KAR 001:140
	810 KAR 008:010	250.041	012 KAR 001:116
	810 KAR 008:020		012 KAR 001:140
	810 KAR 008:025	250.051	012 KAR 001:116
	810 KAR 008:030		012 KAR 001:140
	810 KAR 008:040	250.061	012 KAR 001:116
230.300	810 KAR 008:060		012 KAR 001:140
	810 KAR 003:020	250.071	012 KAR 001:116
	810 KAR 006:010		012 KAR 001:140
	810 KAR 006:030	250.081	012 KAR 001:116
	810 KAR 008:030		012 KAR 001:120
	810 KAR 008:040		012 KAR 001:125
230.310	811 KAR 001:251E		012 KAR 001:130
	810 KAR 003:020		012 KAR 001:140
	810 KAR 004:030		012 KAR 001:160
	810 KAR 005:080		012 KAR 001:170
	810 KAR 008:030		012 KAR 001:175
230.320	810 KAR 008:040	250.091	012 KAR 001:116
	810 KAR 003:020		012 KAR 001:140
	810 KAR 004:030	250.101	012 KAR 001:116
	810 KAR 008:010		012 KAR 001:140
	810 KAR 008:020	250.111	012 KAR 001:116
	810 KAR 008:025		012 KAR 001:140
	810 KAR 008:030		012 KAR 001:155
	810 KAR 008:040	250.366	012 KAR 004:075
	810 KAR 008:060		012 KAR 004:080
230.330	810 KAR 003:020		012 KAR 004:091
	811 KAR 002:120		012 KAR 004:100
230.361	810 KAR 006:010		012 KAR 004:130

KRS SECTION	REGULATION	KRS SECTION	REGULATION
250.371-250.451	012 KAR 004:170	304.1-070	806 KAR 010:030
	012 KAR 004:080	304.1-110	900 KAR 010:111
	012 KAR 004:091	304.2-065	806 KAR 003:170
250.371-250.461	012 KAR 004:075	304.2-205	806 KAR 007:035
250.391	012 KAR 004:130	304.2-140	806 KAR 047:010
250.396	012 KAR 004:130	304.2-150	806 KAR 038:100
	012 KAR 004:140	304.2-160	806 KAR 002:060
250.401	012 KAR 004:130	304.2-210-304.2-290	806 KAR 003:170
250.406	012 KAR 004:110	304.2-250	806 KAR 038:100
250.411	012 KAR 004:170	304.2-260	806 KAR 038:100
257.020	302 KAR 022:150	304.2-270	806 KAR 038:100
257.030	302 KAR 022:150	304.2-290	806 KAR 006:010
257.080	302 KAR 022:150	304.2-310	806 KAR 009:360
257.990	302 KAR 022:150		806 KAR 012:020
258.005	902 KAR 008:160		900 KAR 010:125
258.065	902 KAR 002:020	304.3-050	806 KAR 014:110
258.990	902 KAR 002:020	304.3-070	601 KAR 001:113
260	302 KAR 050:013	304.3-120	806 KAR 003:170
	302 KAR 060:010	304.3-125	806 KAR 003:170
260.775-260.845	012 KAR 005:010	304.3-240	806 KAR 003:170
	012 KAR 005:020		806 KAR 006:100
	012 KAR 005:030		806 KAR 012:010
	012 KAR 005:040	304.3-241	806 KAR 003:170
	012 KAR 005:050	304.3-270	806 KAR 014:007
	012 KAR 005:060	304.4-010	806 KAR 002:095
	012 KAR 005:070		806 KAR 009:025
260.813	902 KAR 050:050		806 KAR 009:370
260.850-260.869	302 KAR 050:021		806 KAR 014:005
	302 KAR 050:031		806 KAR 014:007
	302 KAR 050:045	304.5-020	806 KAR 012:180
	302 KAR 050:056	304.5-030	806 KAR 012:120
	302 KAR 050:080		806 KAR 012:180
260.992	012 KAR 005:010	304.6-070	806 KAR 006:080
	012 KAR 005:020		806 KAR 006:100
	012 KAR 005:030	304.6-120	806 KAR 015:060
	012 KAR 005:040	304.6-130-304.6-180	806 KAR 006:010
	012 KAR 005:050	304.6-140	806 KAR 015:060
	012 KAR 005:060	304.6-145	806 KAR 015:060
	012 KAR 005:070	304.6-150	806 KAR 006:100
273.401	739 KAR 002:050		806 KAR 015:060
273.405-273.453	922 KAR 006:010	304.6-155	806 KAR 006:100
278	807 KAR 005:056	304.6-171	806 KAR 006:100
281.010	601 KAR 001:113	304.6-180	806 KAR 006:100
281.600	601 KAR 001:005	304.7-360	806 KAR 007:090
	601 KAR 001:113	304.7-361	806 KAR 007:035
281.630	601 KAR 001:113	304.8-030	806 KAR 039:050
281.6301	601 KAR 001:113	304.8-040	806 KAR 008:010
281.631	601 KAR 001:113	304.8-120	806 KAR 008:010
281.640	601 KAR 001:113	304.9-020	806 KAR 009:030
281.650	601 KAR 001:113		806 KAR 009:370
281.655	601 KAR 001:113		806 KAR 012:120
281.656	601 KAR 001:113		806 KAR 012:180
281.730	601 KAR 001:005		900 KAR 010:111
281.750	601 KAR 001:005		900 KAR 010:115
281.880	601 KAR 001:005	304.9-040	806 KAR 012:120
281.990	601 KAR 001:113		900 KAR 010:111
281A	601 KAR 001:005	304.9-053	806 KAR 009:360
281A.170-281A.175	702 KAR 005:080	304.9-054	806 KAR 009:360
286.3-030	806 KAR 009:190	304.9-105	806 KAR 009:025
304	900 KAR 010:115	304.9-130	806 KAR 009:025
	900 KAR 010:120	304.9-133	806 KAR 009:360
	900 KAR 010:125	304.9-135	806 KAR 009:190
304.1-010	806 KAR 012:010	304.9-150	806 KAR 009:025
	806 KAR 012:020	304.9-160	806 KAR 009:025
	806 KAR 013:020	304.9-230	806 KAR 009:025
	806 KAR 014:007		806 KAR 009:370
304.1-040	806 KAR 012:120	304.9-260	806 KAR 009:025
	806 KAR 012:180		806 KAR 009:370
304.1-050	806 KAR 003:170	304.9-270	806 KAR 009:025
	806 KAR 009:360	304.9-295	806 KAR 009:025
	806 KAR 012:020	304.9-320	806 KAR 009:025
	806 KAR 014:007	304.9-390	806 KAR 012:120
	806 KAR 046:040	304.9-430	806 KAR 009:025
	900 KAR 010:111		806 KAR 009:030

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304.9-440	806 KAR 012:020		806 KAR 015:050
304.9-432	806 KAR 009:030	304.15-725	806 KAR 015:050
304.9-440	806 KAR 009:030	304.17-380	806 KAR 014:007
304.10-010	601 KAR 001:113		900 KAR 010:115
304.10-030	806 KAR 010:030	304.17A-005	806 KAR 014:007
304.10-040	806 KAR 009:360		900 KAR 010:111
	806 KAR 010:030	304.17A-095	806 KAR 014:007
304.10-050	806 KAR 010:030		900 KAR 010:115
304.10-070	601 KAR 001:113	304.17A-096	806 KAR 014:007
304.10-170	806 KAR 010:030	304.17A-125	900 KAR 010:120
304.10-180	806 KAR 010:030	304.17A-165	806 KAR 009:360
304.12-010	806 KAR 012:010	304.17A-240	900 KAR 010:115
	806 KAR 012:020	304.17A-243	900 KAR 010:120
	806 KAR 012:120	304.17A-245	900 KAR 010:115
	806 KAR 012:150		900 KAR 010:120
	806 KAR 012:170	304.17A-500	900 KAR 010:111
	806 KAR 012:180	304.17A-515	900 KAR 010:115
	806 KAR 014:110	304.17A-590	900 KAR 010:115
304.12-020	806 KAR 012:010	304.17A-607	806 KAR 009:360
	806 KAR 012:020	304.17A-820	806 KAR 003:170
	806 KAR 012:150	304.17C	900 KAR 010:115
	806 KAR 012:170	304.17C-010	806 KAR 014:007
	806 KAR 015:050		900 KAR 010:111
	900 KAR 010:115	304.19-020	806 KAR 019:060
304.12-030	806 KAR 012:120	304.19-080	806 KAR 019:050
	806 KAR 012:180		806 KAR 019:060
	806 KAR 012:020	304.19-120	806 KAR 019:050
304.12-040	806 KAR 012:010	304.20-020	601 KAR 001:113
304.12-060	806 KAR 014:090	304.24-250	806 KAR 014:110
304.12-080	806 KAR 014:110	304.24-310	806 KAR 014:110
304.12-110	806 KAR 012:020	304.24-320	806 KAR 014:110
	806 KAR 014:110	304.24-330	806 KAR 014:110
304.12-120	806 KAR 012:010	304.30-030	806 KAR 030:010
304.12-130	806 KAR 012:010	304.30-060	806 KAR 030:070
	806 KAR 012:020	304.32-140	806 KAR 038:100
304.12-230	803 KAR 025:240	304.32-210	806 KAR 003:170
	806 KAR 012:150	304.35-040	806 KAR 003:170
	806 KAR 012:170	304.36-140	806 KAR 003:170
	806 KAR 009:370	304.37-010	806 KAR 003:170
304.12-240	806 KAR 014:110	304.37-020	806 KAR 003:170
304.13-010	806 KAR 013:020	304.38-070	806 KAR 038:100
304.13-051	806 KAR 014:090	304.38A-080	806 KAR 038:100
	806 KAR 013:020	304.38A-110	806 KAR 038:100
304.13-100	806 KAR 014:110	304.39-020	601 KAR 001:113
304.13-390	900 KAR 010:111		806 KAR 039:050
304.14-030	900 KAR 010:120	304.39-040	601 KAR 001:113
304.14-110	806 KAR 012:020	304.39-080	806 KAR 039:050
304.14-120	806 KAR 014:005	304.39-170	806 KAR 039:050
	806 KAR 014:007	304.39-290	806 KAR 039:050
	806 KAR 014:090	304.39-320	601 KAR 001:113
	806 KAR 014:110	304.40-075	806 KAR 040:020
	806 KAR 015:050	304.42-150	806 KAR 003:170
	806 KAR 015:060	304.45-030	806 KAR 003:170
	806 KAR 015:070	304.45-040	806 KAR 003:170
	900 KAR 010:115	304.47-010	806 KAR 047:010
304.14-130	806 KAR 014:121	304.47-020	806 KAR 047:010
304.14-180	806 KAR 012:020	304.47-040	806 KAR 047:010
304.14-190	806 KAR 014:005	304.47-050	806 KAR 047:010
	806 KAR 014:007	304.47-055	806 KAR 047:010
304.14-420	806 KAR 014:121	304.47-080	806 KAR 047:010
304.14-450	806 KAR 014:121	304.48-020	806 KAR 046:040
	806 KAR 015:050	304.48-050	806 KAR 046:040
	806 KAR 009:025	304.48-070	806 KAR 046:040
304.14-642	806 KAR 014:005	304.48-110	806 KAR 003:170
304.15-020	806 KAR 015:050	304.48-170	806 KAR 046:040
	806 KAR 015:050	304.48-230	806 KAR 046:040
304.15-035	806 KAR 015:060	304.49	806 KAR 049:020
304.15-040	806 KAR 015:060		806 KAR 049:030
304.15-300	806 KAR 015:060	304.49-070	806 KAR 003:170
304.15-310	806 KAR 012:180	304.49-080	806 KAR 003:170
	806 KAR 015:060	304.49-090	806 KAR 003:170
304.15-340	806 KAR 015:060	304.50	806 KAR 052:010
304.15-342	806 KAR 015:060	304.50-060	806 KAR 003:170
304.15-365	806 KAR 015:070	304.50-075	806 KAR 003:170
304.15-700	806 KAR 014:005		

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304.99-020	806 KAR 012:120	309.085	201 KAR 035:010E
	806 KAR 015:050		201 KAR 035:010
304.99-085	806 KAR 010:030		201 KAR 035:020E
309.080	201 KAR 035:010E		201 KAR 035:020
	201 KAR 035:010		201 KAR 035:040E
	902 KAR 020:160		201 KAR 035:040
	902 KAR 020:440	309.086	201 KAR 035:010E
309.0805	201 KAR 035:010E		201 KAR 035:010
	201 KAR 035:010	309.087	201 KAR 035:010E
309.081	201 KAR 035:010E		201 KAR 035:010
	201 KAR 035:010	309.089	201 KAR 035:010E
309.0813	201 KAR 035:010E		201 KAR 035:010
	201 KAR 035:010	309.130	902 KAR 020:160
	201 KAR 035:080E		902 KAR 020:440
	201 KAR 035:080	309.130-1399	922 KAR 001:580
309.0814	201 KAR 035:070E	309.337	201 KAR 045:130
	201 KAR 035:070	309.339	201 KAR 045:130
309.083	201 KAR 035:020E	310.021	902 KAR 020:160
	201 KAR 035:020	311.571	902 KAR 020:440
	201 KAR 035:025E	311.840-311.862	902 KAR 020:440
	201 KAR 035:025		907 KAR 003:005
	201 KAR 035:050E	311.282	902 KAR 002:020
	201 KAR 035:050	311.420	201 KAR 025:011
	201 KAR 035:055E	311.450	201 KAR 025:021
	201 KAR 035:055		201 KAR 025:031
	201 KAR 035:070E	311.480	201 KAR 025:011
	201 KAR 035:070		201 KAR 025:021
	201 KAR 035:075E	311.530-311.620	201 KAR 009:081
	201 KAR 035:075		201 KAR 009:260
309.0831	201 KAR 035:020E	311.550	201 KAR 009:016
	201 KAR 035:020	311.560	902 KAR 020:160
	201 KAR 035:025E	311.565	201 KAR 009:200
	201 KAR 035:025		201 KAR 009:210
	201 KAR 035:055E		201 KAR 009:230
	201 KAR 035:055		201 KAR 009:240
	201 KAR 035:070E		201 KAR 009:360
	201 KAR 035:070	311.571	201 KAR 009:200
	201 KAR 035:075E		201 KAR 009:210
	201 KAR 035:075		902 KAR 002:020
	902 KAR 020:160		902 KAR 020:160
	902 KAR 020:440	311.591	201 KAR 009:240
	907 KAR 015:080	311.592	201 KAR 009:230
309.0832	201 KAR 035:020E		201 KAR 009:240
	201 KAR 035:020	311.593	201 KAR 009:240
	201 KAR 035:025E	311.595	201 KAR 009:016
	201 KAR 035:025		201 KAR 009:200
	201 KAR 035:070E		201 KAR 009:210
	201 KAR 035:070		201 KAR 009:230
	201 KAR 035:075E		201 KAR 009:240
	201 KAR 035:075		901 KAR 005:120
309.0833	201 KAR 035:020E	311.597	201 KAR 009:016
	201 KAR 035:020		201 KAR 009:230
	201 KAR 035:025E	311.601	201 KAR 009:360
	201 KAR 035:025	311.646	922 KAR 002:120
	201 KAR 035:070E	311.720	901 KAR 005:120
	201 KAR 035:070		902 KAR 004:110
	201 KAR 035:075E	311.725	902 KAR 004:110
	201 KAR 035:075	311.774	901 KAR 005:120
309.084	201 KAR 035:010E	311.781	901 KAR 005:120
	201 KAR 035:010	311.782	901 KAR 005:120
	201 KAR 035:020E	311.783	901 KAR 005:120
	201 KAR 035:020	311.840	907 KAR 003:010
309.0841	201 KAR 035:020E	311.840-311.862	201 KAR 009:081
	201 KAR 035:020		201 KAR 009:260
	201 KAR 035:050E		902 KAR 020:160
	201 KAR 035:050	311.842	201 KAR 009:016
	201 KAR 035:070E		201 KAR 009:200
	201 KAR 035:070		201 KAR 009:230
309.0842	201 KAR 035:020E		201 KAR 009:360
	201 KAR 035:020	311.844	201 KAR 009:360
	201 KAR 035:050E	311.850	201 KAR 009:016
	201 KAR 035:050		201 KAR 009:200
	201 KAR 035:070E		201 KAR 009:210
	201 KAR 035:070		201 KAR 009:230

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	201 KAR 014:135	323.095	201 KAR 019:260
	201 KAR 014:140		201 KAR 019:265
317.540	201 KAR 014:135	323.100	201 KAR 019:245
	201 KAR 014:140	323.110	201 KAR 019:255
318	922 KAR 002:120	323.120	201 KAR 019:260
318.090	815 KAR 020:150	323.210	201 KAR 019:230
318.130	815 KAR 020:150		201 KAR 019:235
	902 KAR 045:160		201 KAR 019:245
318.134	815 KAR 020:150	323.215	201 KAR 019:220
318.140	815 KAR 020:150		201 KAR 019:225
318.160	815 KAR 020:150	323.230	201 KAR 019:275
318.170	815 KAR 020:150	323.400-323.416	201 KAR 019:440
319	922 KAR 001:580		201 KAR 019:445
319.005	201 KAR 026:130	323.400	201 KAR 019:415
319.010	201 KAR 026:115		201 KAR 019:420
	201 KAR 026:121		201 KAR 019:425
319.015	201 KAR 026:121		201 KAR 019:430
319.032	201 KAR 026:121		201 KAR 019:435
	201 KAR 026:130	323.402	201 KAR 019:430
	201 KAR 026:171		201 KAR 019:450
	201 KAR 026:180	323.406	201 KAR 019:410
	201 KAR 026:185		201 KAR 019:420
	201 KAR 026:230		201 KAR 019:435
	201 KAR 026:250		201 KAR 019:450
319.050	201 KAR 026:300	323.408	201 KAR 019:410
	201 KAR 026:121		201 KAR 019:415
	201 KAR 026:125		201 KAR 019:420
	201 KAR 026:155		201 KAR 019:430
	201 KAR 026:171		201 KAR 019:450
	201 KAR 026:185		201 KAR 019:455
	201 KAR 026:190	323.410	201 KAR 019:410
	201 KAR 026:200		201 KAR 019:415
	201 KAR 026:230		201 KAR 019:420
	902 KAR 020:160		201 KAR 019:425
319.053	902 KAR 020:440		201 KAR 019:430
	201 KAR 026:190	323.412	201 KAR 019:455
	201 KAR 026:200	323.414	201 KAR 019:450
	201 KAR 026:230	323.416	201 KAR 019:435
319.056	201 KAR 026:290	324A.010	201 KAR 030:190
	201 KAR 026:171	324A.030	201 KAR 030:190
	201 KAR 026:190	324A.035	201 KAR 030:040
	902 KAR 020:160		201 KAR 030:190
319.064	902 KAR 020:440	324A.040	201 KAR 030:190
	201 KAR 026:171	324A.045	201 KAR 030:190
	201 KAR 026:190	324A.047	201 KAR 030:190
	201 KAR 026:200	324A.050	201 KAR 030:040
	201 KAR 026:230	324A.052	201 KAR 030:190
	201 KAR 026:250	324A.065	201 KAR 030:190
	201 KAR 026:280	324A.075	201 KAR 030:190
	902 KAR 020:160	324.330	201 KAR 001:100
319.082	902 KAR 020:440	327.010	907 KAR 001:604
	201 KAR 026:130	327.300	201 KAR 022:170
319.092	201 KAR 026:171	333.020	902 KAR 002:020
319.118	201 KAR 026:171	333.130	902 KAR 002:020
	201 KAR 026:130		902 KAR 002:190E
	201 KAR 026:171		902 KAR 002:211E
319.140	201 KAR 026:310	334A.020	907 KAR 001:604
319.990	201 KAR 026:130	335	922 KAR 001:580
319A.010	907 KAR 001:604	335.010	201 KAR 023:070
319C.010	902 KAR 020:160	335.030	201 KAR 023:150
	902 KAR 020:440	335.070	201 KAR 023:150
320.210	201 KAR 005:140	335.080	201 KAR 023:070
	902 KAR 020:160		902 KAR 020:160
321	302 KAR 022:150		902 KAR 020:440
323.010	201 KAR 019:275	335.100	201 KAR 023:070
323.020	201 KAR 019:250		902 KAR 020:160
	201 KAR 019:270		902 KAR 020:440
323.050	201 KAR 019:215	335.300	201 KAR 032:035
	201 KAR 019:220		201 KAR 032:060
323.060	201 KAR 019:225		902 KAR 020:160
	201 KAR 019:235		902 KAR 020:440
	201 KAR 019:240	335.305	201 KAR 032:110
323.080	201 KAR 019:255	335.310	201 KAR 032:110
323.090	201 KAR 019:230	335.320	201 KAR 032:035

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	201 KAR 032:110	342.039	803 KAR 025:170
335.325	201 KAR 032:110	342.260	803 KAR 025:185
335.330	201 KAR 032:030	342.267	803 KAR 025:240
	201 KAR 032:035	342.315	803 KAR 025:091
335.332	201 KAR 032:035	342.340	803 KAR 025:021
335.340	201 KAR 032:030		803 KAR 025:175
	201 KAR 032:060		803 KAR 025:185
335.342	201 KAR 032:030	342.342	803 KAR 025:021
335.380	201 KAR 032:110	342.345	803 KAR 025:021
335.399	201 KAR 032:110	342.347	803 KAR 025:021
335.500	902 KAR 020:160	342.900-342.912	803 KAR 025:220
	902 KAR 020:440	342.990	803 KAR 025:015
335.625	201 KAR 038:070	363.900-363.908	302 KAR 079:011
335.640	201 KAR 038:070		302 KAR 079:012
335.650	201 KAR 038:070	365	601 KAR 001:113
338	803 KAR 002:021	365.390	103 KAR 001:160
	803 KAR 002:120	369.101-369.120	907 KAR 003:005
	803 KAR 002:314	381.780	902 KAR 010:010
	803 KAR 002:408	387.010	910 KAR 002:060
	803 KAR 002:409	387.510	910 KAR 002:060
	803 KAR 002:413	387.760	910 KAR 002:060
338.015	803 KAR 002:096	400.203	907 KAR 003:005
	803 KAR 002:180E		907 KAR 003:010
	803 KAR 002:180	403.707	201 KAR 020:411
	803 KAR 002:320	413.75	907 KAR 003:005
	803 KAR 002:417	415.174	907 KAR 003:005
338.021	803 KAR 002:050	415.184	907 KAR 003:005
338.031	803 KAR 002:320	421.500-421.575	201 KAR 020:411
338.051	803 KAR 002:010	424.110-424.150	902 KAR 008:170
	803 KAR 002:019	431.17	907 KAR 003:005
	803 KAR 002:309	431.600	922 KAR 001:330
	803 KAR 002:401		922 KAR 001:580
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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
016 KAR 003:080	12-04-2020	To be amended, filing deadline 06-06-22
017 KAR 003:020	08-07-2020	Remain As Is
201 KAR 039:040	02-01-2021	Remain As Is
201 KAR 037:010	08-07-2020	Remain As Is
201 KAR 045:140	10-27-2020	Remain As Is
201 KAR 045:150	10-27-2020	Remain As Is
201 KAR 045:160	10-27-2020	Remain As Is
302 KAR 021:001	02-11-2021	Remain As Is
302 KAR 021:020	02-11-2021	Remain As Is
302 KAR 021:030	02-11-2021	Remain As Is
302 KAR 040:010	02-11-2021	Remain As Is
302 KAR 021:050	02-11-2021	Remain As Is
302 KAR 021:060	02-11-2021	Remain As Is
302 KAR 021:070	02-11-2021	Remain As Is
302 KAR 021:080	02-11-2021	Remain As Is
703 KAR 005:080	10-23-2020	Remain As Is
803 KAR 002:411	10-01-2020	To be amended, filing deadline 04-01-22
803 KAR 002:419	10-01-2020	To be amended, filing deadline 04-01-22
806 KAR 030:020	02-11-2021	Remain As Is
806 KAR 037:010	02-11-2021	Remain As Is
806 KAR 039:070	02-11-2021	To be amended, filing deadline 08-11-22
910 KAR 001:190	12-11-2020	To be amended, filing deadline 06-11-22
922 KAR 001:130	09-04-2020	Remain As Is
922 KAR 001:450	10-02-2020	Remain As Is

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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>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).
 † - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

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201 KAR 006:040	11-09-2020		
201 KAR 006:050	11-09-2020		
201 KAR 006:070	11-09-2020		
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201 KAR 012:082	† 03-24-2021		
201 KAR 017:011	10-16-2020		
201 KAR 017:012	10-16-2020		
201 KAR 017:030	10-16-2020		
201 KAR 017:032	10-16-2020		
201 KAR 017:034	10-16-2020		
201 KAR 017:036	10-16-2020		
201 KAR 028:060	10-16-2020		
201 KAR 028:170	10-16-2020		
201 KAR 028:200	10-16-2020		
201 KAR 044:090	10-16-2020		
201 KAR 044:100	10-16-2020		
201 KAR 044:120	10-16-2020		
201 KAR 045:110	10-16-2020		
201 KAR 045:120	10-16-2020		
201 KAR 045:150	10-16-2020		
201 KAR 045:170	10-16-2020		
201 KAR 045:180	10-16-2020		
201 KAR 047:010	10-16-2000		
202 KAR 007:020	† 03-24-2021		
702 KAR 003:270E	‡ 09-23-2020		
702 KAR 007:125E	‡ 09-23-2020		
815 KAR 002:020	05-29-2020		
815 KAR 004:025	05-29-2020		
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815 KAR 030:060	05-29-2020		
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