



# ADMINISTRATIVE REGISTER OF KENTUCKY

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

## MEETING NOTICES

[Administrative Regulation Review Subcommittee](#) - tentatively scheduled to meet on April 8, 2024, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 1997 [Online agenda is updated as needed](#)

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

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

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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



**Administrative Regulation Review Subcommittee**  
**TENTATIVE Meeting Agenda**  
**Monday, April 8, 2024 at 1 p.m.**  
**Annex Room 149**



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

**OFFICE OF THE GOVERNOR**

**Department of Veterans' Affairs**  
**Veterans' Programs**

017 KAR 006:020. Kentucky Women Veterans Program and coordinating committee, administrative procedures. (Amended After Comments) (Deferred from February)

017 KAR 006:030. Kentucky Wounded or Disabled Veterans Program, administrative procedures. (Amended After Comments) (Deferred from February)

**GENERAL GOVERNMENT CABINET**

**Personnel Board**

101 KAR 001:325. Probationary periods.

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**Board of Dentistry**

201 KAR 008:533. Licensure of dentists.

**Board of Landscape Architects**

201 KAR 010:030. Code of ethics.

201 KAR 010:040. Applications.

201 KAR 010:050. Fees.

201 KAR 010:070. Seals.

201 KAR 010:080. Continuing education.

**Board of Nursing**

201 KAR 020:370. Applications for licensure.

201 KAR 020:506. Nurse licensure compact.

**Board of Licensed Professional Counselors**

201 KAR 036:100E. Counseling compact. (Filed with Ordinary) ("E" expires 09-08-2024) (Emergency Amended After Comments)

201 KAR 036:100. Counseling compact. (Filed with Emergency)

**TOURISM, ARTS AND HERITAGE CABINET**

**Department of Fish and Wildlife Resources**

**Fish**

301 KAR 001:140. Special commercial fishing permit for Kentucky and Barkley lakes.

301 KAR 001:146. Commercial fishing gear.

301 KAR 001:150. Waters open to commercial fishing.

301 KAR 001:155. Commercial fishing requirements. (Deferred from March)

301 KAR 001:201. Taking of fish by traditional fishing methods.

**Game**

301 KAR 002:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.

**ENERGY AND ENVIRONMENT CABINET**

**Department for Natural Resources**

**Administration**

416 KAR 001:001. Definitions for 416 KAR Chapter 1.

416 KAR 001:010. Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund.

416 KAR 001:020. Equipment revolving loan program.

**JUSTICE AND PUBLIC SAFETY CABINET**

**Internal Investigations Branch**

**Abuse Investigation**

500 KAR 013:020. Internal Investigations Branch. (Amended After Comments) (Deferred from February)

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**EDUCATION AND LABOR CABINET**

**Department of Education  
Office of Instruction**

704 KAR 003:095. The use of a multitiered system of supports. (Deferred from March)

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Office of Data Analytics**

**Data Reporting and Public Use Data Sets**

900 KAR 007:030. Data reporting by health care providers. (Not Amended After Comments)

900 KAR 007:040. Release of public data sets for health facility and services data. (Not Amended After Comments)

**Office of Inspector General**

**Health Services and Facilities**

902 KAR 020:048. Operation and services; nursing homes. (Amended After Comments)

902 KAR 020:086. Operation and services; intermediate care facilities for individuals with intellectual disabilities. (Amended After Comments)

**Department for Medicaid Services**

**Medicaid Services**

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

907 KAR 001:065. Payments for price-based nursing facility services.

907 KAR 001:479. Medical supplies, equipment, and appliances covered benefits and reimbursement.

**Payment and Services**

907 KAR 003:066. Nonemergency medical transportation waiver services and payments. (Not Amended After Comments)

**Private Duty Nursing**

907 KAR 013:010. Private duty nursing service coverage provisions and requirements.

907 KAR 013:015. Private duty nursing service or supply provisions and requirements.

**Behavioral Health**

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

**Department for Behavioral Health, Developmental and Intellectual Disabilities  
Substance Abuse**

908 KAR 001:410. Recovery housing. (Amended After Comments)

**Office of the Secretary**

**General**

915 KAR 001:001. Definitions for 915 KAR Chapter 1.

915 KAR 001:030. Cultivator.

915 KAR 001:040. Processor.

915 KAR 001:050. Producer.

915 KAR 001:060. Safety compliance facility.

915 KAR 001:070. Dispensary.

915 KAR 001:080. Transportation and delivery of medicinal cannabis.

915 KAR 001:090. Advertising.

915 KAR 001:100. Packaging and labeling of medicinal cannabis.

915 KAR 001:110. Medicinal cannabis testing.

**3. REGULATIONS REMOVED FROM APRIL'S AGENDA**

**KENTUCKY COMMISSION ON HUMAN RIGHTS**

**Human Rights**

104 KAR 001:010. Posting, distribution and availability of notices and pamphlets. (Deferred from September)

104 KAR 001:040. Guidelines for advertising employment or licensing opportunities. (Deferred from September)

104 KAR 001:050. Standards and procedures for providing equal employment opportunities. (Deferred from September)

104 KAR 001:080. Guidelines on fair housing. (Deferred from September)

104 KAR 001:100. Nondiscrimination on the basis of disability by a place of public accommodations, licensing agencies and trade organizations. (Deferred from September)

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Office of Inspector General**

**Health Services and Facilities**

902 KAR 020:036. Operation and services; personal care homes. (Comments Received; SOC ext., due 04-15-2024)

**Department for Medicaid Services**

**Behavioral Health**

907 KAR 015:090. Crisis continuum services provided or mediated by an administrative service organization. (Comments Received; SOC ext. due 04-15-2024)

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**Department for Community Based Services**

**K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

921 KAR 002:015. Supplemental programs for persons who are aged, blind, or have a disability. (Comments Received, SOC ext., due 04-15-2024)

**Protection and Permanency**

**Child Welfare**

922 KAR 001:140. Permanency services. (Comments Received; SOC ext., due 04-15-2024)

922 KAR 001:145. Subsidized permanent custody. (Comments Received; SOC ext., due 04-15-2024)

922 KAR 001:495. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet. (Comments Received; SOC ext., due 04-15-2024)

922 KAR 001:565. Service array for a relative or fictive kin caregiver. (Comments Received; SOC ext., due 04-15-2024)

**Adult Services**

922 KAR 005:120. Vulnerable adult maltreatment registry and appeals. (Comments Received; SOC ext., due 04-15-2024)

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

**STANDARD ADMINISTRATIVE REGULATION REVIEW PROCEDURE  
Overview for Regulations Filed under KRS Chapter 13A As Amended by 2021 Legislation**

**(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; 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 next *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 the month of 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. Filing deadlines are established in KRS 13A.050.

**Review Procedure**

After the public hearing and public comment period processes are completed, the administrative regulation is 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.



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**EMERGENCY ADMINISTRATIVE REGULATIONS**

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

**NONE**

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

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

**BOARDS AND COMMISSIONS**  
**Board of Licensed Professional Counselors**  
**(Emergency Amended After Comments)**

**201 KAR 36:100E. Counseling compact.**

PREVIOUS VERSIONS:

New Emergency Administrative Regulation: [50 Ky.R. 1649](#)

EFFECTIVE: March 5, 2024

RELATES TO: KRS 335.560

STATUTORY AUTHORITY: KRS 335.515, 335.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.560, SECTION 16.B.1. requires the Board of Licensed Professional Counselors to review any rule adopted by the Counseling Compact pursuant to SECTION 11 of KRS 335.560 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 Counseling Compact.

Section 1. The Board of Licensed Professional Counselors shall comply with all rules of the Counseling Compact, which includes the Counseling Compact Rules as of January 10, 2024~~[October 25, 2023]~~.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference: "The Counseling Compact Rules", January 10, 2024~~[October 25, 2023]~~, and as revised:

(a) Chapter 2 – Definitions, adopted October 25, 2023;

(b) Chapter 3 – Examination Requirements, adopted October 25, 2023; and

(c) Chapter 4 – Data System Reporting Requirements, adopted January 10, 2024.

(2)

(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) This material may also be obtained on the Board of Licensed Professional Counselors' Web site at <https://lpc.ky.gov/>.

(3) This material may also be obtained at:

(a) The Counseling Compact Commission, 108 Wind Haven Drive, Suite A, Nicholasville, Kentucky 40356; or[-]

(b) <https://counselingcompact.org/compact-commission/rulemaking/><https://counselingcompact.org/contact-us/>.

DR. HANNAH COYT, LPCC-S, NCC, CCMHC, Chair

APPROVED BY AGENCY: March 4, 2024

FILED WITH LRC: March 5, 2024

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements KRS 335.560, the Counseling Compact.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 335.560, SECTION 16.B.1. requires rules adopted by the Counseling

Compact 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 specific requirements of the authorizing statute, KRS 335.560, SECTION 16.B.1. which requires rules adopted by the Counseling Compact to be promulgated as administrative regulations pursuant to KRS Chapter 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the content of KRS 335.560 which requires this promulgation.

(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 add a new rule adopted by the Compact Commission on January 10, 2024.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because KRS 335.560, Section 16.B.1 requires adopted by the Counseling Compact to be promulgated as administrative regulations pursuant to KRS Chapter 13A, which must be filed within sixty (60) days of the adoption of a rule by the Compact Commission.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the specific requirements of the authorizing statute, KRS 335.560, Section 16.B.1. which requires rules adopted by the Counseling Compact to be promulgated as administrative regulations within sixty (60) days of adoption by the Commission. The amendment relates to Rule 4 adopted on January 10, 2024.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by including Rule 4 in an existing emergency regulation being processed for the adoption of Rule 2 and Rule 3 by the Commission on October 25, 2023. This emergency regulation was originally filed in compliance with the KRS 335.560 on December 19, 2023.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 4429 active and 66 inactive licensees in some capacity, and will also affect new applicants for licensure.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE

(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 Licensed Professional Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515, 335.560. Interstate compacts are specifically authorized under the federal constitution (Article 1, Section 10, Clause 3- the Compacts Clause) and take precedence over any conflicting state law pursuant to the Compacts Clause and the Contracts Clause, U.S. Constitution, Article 1, Section 10, Clause 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.: 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? None.

(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: There is no cost associated with the amendment.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? Nothing.

(d) How much will it cost the regulated entities for subsequent years? Nothing.

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

Cost Savings (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have a major economic impact.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

EDUCATION AND LABOR CABINET  
Education Professional Standards Board  
(As Amended at ARRS, March 11, 2024)

**16 KAR 4:020. Certification requirements for teachers of exceptional children.**

RELATES TO: KRS 157.200, 157.250, 161.020, 161.028(1), 161.030, 20 U.S.C. 1412, ~~34~~ 34 C.F.R. 300.156  
STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.028 require the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate for all public-school positions, including those for teaching exceptional children. This administrative regulation establishes the certification requirements for teachers of exceptional children.

Section 1. Certification Requirements for Assignment of Special Education Personnel.

(1) In accordance with Chapter 2 of Title 16 of the Kentucky Administrative Regulations, the EPSB shall issue certificates for teaching exceptional children with one (1) or more of the disabilities defined in 34 C.F.R. 300.8 and 707 KAR 1:002.

(2) A teacher holding the following certification shall be assigned to serve students with moderate and severe disabilities at any grade level: Certification for Teaching Exceptional Children – Moderate and Severe Disabilities, Grades Primary through 12.

(3) A teacher holding the following certification shall be assigned to serve students with learning and behavior disorders:

(a) Certification for Teaching Exceptional Children – Learning and Behavior Disorders, Grades 8 through 12; or

(b) Certification for Teaching Exceptional Children – Learning and Behavior Disorders, Grades Primary through 12.

(4) A teacher holding the following certification shall be assigned to serve students with visual impairments at any grade level: Certification for Teaching Exceptional Children – Visually Impaired, Grades Primary through 12.

(5) A teacher holding the following certification shall be assigned to serve students with hearing impairments at any grade level:

(a) Certification for Teaching Exceptional Children – Hearing Impaired, Grades Primary through 12; or

(b) Certification for Teaching Exceptional Children – Hearing Impaired with Sign Proficiency, Grades Primary through 12.

(6) A teacher holding the following certification shall be assigned to serve students with speech and language and communications disorders: Certification for Teaching Exceptional Children – Communication Disorders, Grades Primary through 12.

(7) A teacher holding the following certification shall be assigned to serve students with orientation and mobility disabilities: Certification for Teaching Exceptional Children – Orientation and Mobility Specialist.

Section 2. ~~Waiver~~Requests for Program Teacher Assignment.

(1) Local school districts which need to assign teachers to teach exceptional classes or students, with the exception of students receiving services for communication disorders, not consistent with the teacher's certification for teaching exceptional children shall request approval~~[a waiver]~~ for the program teacher assignment through the Kentucky Department of Education's (KDE) Office of Special Education and Early Learning and ~~[be approved by]~~ the EPSB.

(2) The EPSB and KDE shall give consideration for this approval based on information provided by the local school district in its request. The request shall include:

(a) The teacher's name, school assignment, certificate number, class plan assignment, and current certification;

(b) A listing of pupils currently served by category of exceptionality;

(c) A listing of pupils the district is requesting to be served by exceptionality; and

(d) Any other relevant information which the district wishes to have considered in the decision-making process.

(3) Following consideration by the KDE and ~~[approval by]~~ the EPSB, the local district shall be promptly notified of the decision on the approval~~[waiver]~~ request.

(4) The assignment shall not exceed the length of the school year for which it was initiated.

FILED WITH LRC: March 11, 2024

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

FINANCE AND ADMINISTRATION CABINET  
Kentucky Public Pensions Authority  
(As Amended at ARRS, March 11, 2024)

**105 KAR 1:390. Employment after retirement.**

RELATES TO: KRS 15.420(2)(a), 16.010, 16.505, 61.505, 61.510, 61.565, 61.590, 61.637, 61.675, 61.702, 70.291 - 70.293, 78.510, 78.545, 78.5540, 78.625, 78.635, 95.022, 158.441, 164.952, 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.590, 61.637(18), 78.5540(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.637(18) and 78.5540(5) requires the Kentucky Public Pensions Authority to promulgate administrative regulations to implement the requirements of KRS 61.637 and 78.5540. This administrative regulation concerns the administration of KRS 61.637 and 78.5540 in conjunction with federal law regarding bona fide separation from service and changes in employment relationship if a retired member returns to employment with a participating employer in a retirement system operated by the Kentucky Public Pensions Authority. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statutes and administrative regulations (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax qualified status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

Section 1. Definitions.

(1) "Bona fide separation from service" means:

(a) A cessation of the employment relationship between the member and the member's employer; and

(b) There is no prearranged agreement.["Agency" means:]

~~[(a)] [Prior to April 1, 2021, the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System; and]~~

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~~[(b)] [Beginning April 1, 2024, the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.]~~

~~(2) "Employee" means a retired member who is performing services for an employer in a manner that demonstrates an employment relationship under the common law factors used by the Internal Revenue Service.~~

~~(3) ["Employer" is defined by KRS 16.505(3), 61.510(6), and 78.510(7).]~~

~~[(4)] ["File" means a form has been received at the retirement office by mail, fax, secure email, in-person delivery, or upload via Self Service on the Web site maintained by the agency (if available).]~~

~~[(5)] ["Fiscal Year" is defined by KRS 16.505(32), 61.510(19), and 78.510(19).]~~

~~[(6)] ["Hazardous position" is defined by KRS 78.510(42).]~~

~~[(7)] ["Member" is defined by KRS 16.505(21), 61.510(8), and 78.510(8).]~~

~~[(8)] ["Month" is defined by KRS 16.505(34), 61.510(35), and 78.510(32).]~~

~~[(9)] ["Nonhazardous position" is defined by KRS 61.510(44) and 78.510(41).]~~

~~[(10)] "Non-participating position" means any position of employment with a participating employer other than a regular full-time position or a regular full-time officer position.~~

~~[(11)] ["Participating employer" means any employer that participates in one (1) of the systems operated by the agency.]~~

~~[(12)] "Participating position" means a regular full-time position or a regular full-time officer position.~~

~~(5) "Prearranged agreement" means a verbal or written, explicit or implicit agreement:~~

~~(a) Between the retired member and his or her employer for the retired member to reemploy with the employer within twelve (12) months after the retired member's effective retirement date; and~~

~~(b) That occurred prior to the retired member's effective retirement date.~~

~~[(13)] ["Reemployment" means the retired member's first date of employment with a participating employer following his or her most recent retirement date.]~~

~~[(14)] ["Regular full-time officer position" is defined by KRS 16.505(22).]~~

~~[(15)] ["Regular full-time position" is defined by KRS 61.510(21), 61.680(6), 78.510(21), and 78.545(16).]~~

~~[(16)] ["Retired member" is defined by KRS 16.505(11), 61.510(24), and 78.510(23).]~~

~~[(17)] "Retirement date" means the member's effective retirement date as described in KRS 61.590(5) and 78.545(4).~~

~~[(18)] ["Retirement office" is defined by KRS 16.505(28), 61.510(31), and 78.510(29).]~~

~~[(19)] ["School board" is defined by KRS 78.510(4).]~~

~~[(20)] ["Service" is defined by KRS 16.505(6), 61.510(9), and 78.510(9).]~~

~~[(21)] ["Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.]~~

~~[(22)] ["Volunteer" is defined by KRS 61.510(42) and 78.510(39).]~~

Section 2. Form 6000 Certification.

(1) In order to retire with the systems~~[operated by the agency]~~, an eligible member shall complete and file a valid~~[submit a]~~ Form 6000, Notification of Retirement, which~~[as incorporated by reference in 105 KAR 1:200. The Form 6000, Notification of Retirement,]~~ shall comply with the requirements of KRS 61.590, KRS 78.545, and 105 KAR 1:200.

(2) The agency shall not process a Form 6000, Notification of Retirement, until the member certifies on the Form 6000 that there is no prearranged agreement for reemployment with a participating employer after the member's retirement date.

Section 3. Employment After Retirement.

(1) A retired member who is reemployed with a participating employer in any position, including participating positions and non-participating positions, shall have:

(a) A bona fide separation from service~~[as provided in subsection (2) of this section]; and~~

(b) A break in service as provided in subsection (3) of this section.

(2)

(a) A retired member who is reemployed with a participating employer in any position, including participating positions and non-participating positions shall not have a prearranged agreement.~~["Bona fide separation from service" as provided in this section shall include a cessation of the employment relationship between the member and the member's employer without a prearranged agreement when the member retires that he or she will return to work for any participating employer in any capacity.]~~

~~[(b)] ["Prearranged agreement" as provided in this section shall not include reemployment accepted more than twelve (12) months after the member's retirement date.]~~

(b)(e) An elected official who is reelected and takes office in the same elected position as he or she held prior to retirement within twelve (12) months after his or her effective retirement date shall be deemed to have a prearranged agreement.~~[official's retirement shall be voided due to the existence of a prearranged agreement if, within twelve (12) months of retirement, the official is reelected and takes office in the same position as the elected official held prior to retirement.]~~

(3) "Break in service" as provided in this section shall require that:

(a) For effective retirement dates prior to January 1, 2024:

1. A member who retired from a hazardous position shall have a one (1) month break in service before returning to work with any participating employer in a regular full-time hazardous participating position.

2.(b) Except as provided in subparagraph 1. of this paragraph~~[paragraph(a) of this subsection], a member who retired from a hazardous or nonhazardous position shall have a three (3) month break in service before returning to work with any participating employer in a participating or nonparticipating position.~~

(b) For effective retirement dates beginning January 1, 2024, a member who retired from a hazardous or nonhazardous position shall have a one (1) month break in service before returning to work with any participating employer in a participating or nonparticipating position.

(4) If a retired member seeks reemployment with a participating employer within twelve (12) months of his or her retirement date, then the following shall be filed~~[at the retirement office]~~:

(a) A valid Form 6751, Employer Certification Regarding Reemployment, completed by the~~[The]~~ participating employer, which shall certify that there was no prearranged agreement~~[on a completed Form 6751, Employer Certification Regarding Reemployment];~~

(b) A valid Form 6754, Member Reemployment Certification, completed by the retired member; and

(c) Any other information requested by the agency from the participating employer and the retired member pursuant to KRS 61.637(8) and 78.5540(2)(a).

(5)

(a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar days after receipt of all required forms and additional requested information.

(b) If the agency determines that the retired member failed to comply with any of the requirements of this section or federal law~~[have a bona fide separation from service or a break in service and returned to work with any participating employer in any position, including a participating position or a non-participating position], the retired member's retirement shall be voided and he or she shall repay all retirement allowances, dependent child payments, and hospital and medical insurance~~~~[health]~~ plan premiums paid by the systems.

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Section 4. Independent Contractors and Leased Employees.

(1) If a retired member seeks to provide services to a participating employer as an independent contractor, under a professional services contract, or as a leased employee within twelve (12) months of the retired member's retirement date, then the following shall be filed ~~at the retirement office~~:

(a) A valid Form 6752, Employer Certification of Independent Contractor/Leased Employee, completed by the participating employer;

(b) A valid Form 6754, Member Reemployment Certification, completed by the retired member;

(c) A complete copy of any contract under which services are provided by the retired member to the participating employer; and

(d) Any other information requested by the agency from the participating employer and the retired member pursuant to KRS 61.637(9) and 78.5540(2)(b).

(2) The agency shall apply common law factors used by the Internal Revenue Service (IRS), in accordance with IRS Publication 1779, Independent Contractor or Employee, to determine whether a retired member is an employee of the participating employer or an independent contractor of the participating employer. The agency may also consider rules issued by the United States Department of Labor for determining whether a worker is an employee or an independent contractor under federal wage and hour law.

(3)

(a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar days after receipt of all required forms and requested information.

(b) If the agency determines that the retired member is an employee of the participating employer, rather than an independent contractor or leased employee through a leasing company, staffing agency, or other entity:

1. The retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall have a "bona fide separation from service" and "break in service"; and

2. The employer shall ~~do the following~~:

a. Report the retired member as required by KRS 61.675, ~~[KRS 78.625, and 105 KAR 1:140-105 KAR 1:145]~~;

b. Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and

c. Reimburse the systems for the cost of hospital and medical[health] insurance plan premiums paid by the systems for the retired member.

(c) If the agency determines that the retired member is an independent contractor or leased employee through a leasing company, staffing agency, or other entity, the retired member may still be required to observe a bona fide separation from service to the extent required by federal law.

Section 5. Volunteers.

(1) If a retired member seeks to volunteer with a participating employer within twelve (12) months of the retired member's retirement date, then the following shall be filed ~~at the retirement office~~:

(a) A valid Form 6753, Employer Certification of Volunteer, completed by the participating employer;

(b) A valid Form 6754, Member Reemployment Certification, completed by the retired member; and

(c) Any other information requested by the agency from the participating employer and retired member pursuant to KRS 61.637(8) and 78.5540(2)(a).

(2)

(a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar days after receipt of all required forms and requested information.

(b) If the Agency determines that the retired member is an employee of the participating employer, rather than a volunteer:

1. The retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall have a "bona fide separation from service" and "break in service"; and

2. The employer shall ~~do the following~~:

a. Report the retired member as required by KRS 61.675, 78.625, and 105 KAR 1:140-105 KAR 1:145;

b. Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and

c. Reimburse the systems for the cost of hospital and medical[health] insurance plan premiums paid by the systems for the retired member.

(c) If the agency determines that the retired member is a volunteer, the retired member may still be required to observe a bona fide separation from service to the extent required by federal law.

Section 6. Hospital and Medical[Health] Insurance Plan Premium Reimbursements for Retired Members Reemployed by Multiple Participating Employers.

(1) This section shall only apply to a retired member who is reemployed by a participating employer on or after September 1, 2008 in accordance with KRS 61.637(17) and 78.5540(4).

(2) If a retired member is reemployed by multiple participating employers in a month in ~~two (2) or more~~ [positions that qualify as] regular full-time positions, one (1) regular full-time position and one (1) or more part-time positions pursuant to KRS 61.680(6) and 78.545, or multiple part-time positions pursuant to KRS 61.680(6) and 78.545, then:

(a) Each [each] participating employer shall be responsible for reimbursing the systems for a portion of the hospital and medical[health] insurance plan premium paid by the systems to provide coverage for the retired member for that month; and

(b) The portion shall be [that is] equal to the cost of the premium divided by the number of participating employers that are not exempt from reimbursement of hospital and medical[health] insurance plan premiums.

(3) [(2)] Participating employers that are exempt from reimbursement of hospital and medical[health] insurance plan premiums under Section 7 of this administrative regulation, or by virtue of being a school board employing the retired member for eighty (80) calendar days or less during the fiscal year, are not responsible for hospital and medical[health] insurance plan premiums under this section.

Section 7. Exemption for Payment Of Employer Contributions and Reimbursement of Hospital and Medical[Health] Insurance Plan Premiums for Retired Members Reemployed as Police Officers and School Resource Officers.

(1) This section shall only apply to a retired member who is reemployed by a participating employer on or after September 1, 2008 in accordance with KRS 61.637(17) and 78.5540(4).

(2)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical[health] insurance plan premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 for a term of appointment of no more than one (1) year if a ~~valid~~ [completed] Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are on file [at the retirement office] prior to the start of the retired member's term of appointment.

(b) If a ~~valid~~ [completed] Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are not on file [at the retirement office] prior to the start of the retired member's term of appointment as a police officer pursuant to KRS 70.291 to 70.293, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the month after a ~~valid~~ [completed] Form 6760 and supporting documentation are on file [at the retirement office].

(3) [(2)]

(a) For each subsequent term of reappointment after the initial term of appointment listed on the ~~valid~~ [completed] Form 6760, County Police or Sheriff Appointment of Retired Police Officer,

described in subsection (1) of this section, the participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical[health] insurance plan premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 for a term of reappointment of no more than one (1) year if a valid[completed] Form 6764, Recertification of Retired Police Officer, is on file [~~at the retirement office]~~ prior to the start of the retired member's term of reappointment.

(b) If a valid[completed] Form 6764, Recertification of Retired Police Officer, is not on file [~~at the retirement office]~~ prior to the start of the retired member's term of reappointment as a police officer pursuant to KRS 70.291 to 70.293, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the month after a valid[completed] Form 6764 and supporting documentation are on file [~~at the retirement office]~~.

(4)(3)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical[health] insurance plan premiums paid by the systems to provide coverage for a retired member reemployed as a school resource officer pursuant to KRS 158.441 for a term of appointment of no more than one (1) year if a valid[completed] Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the Form 6766 are on file [~~at the retirement office]~~ prior to the start of the retired member's term of appointment.

(b) If a valid[completed] Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the Form 6766 are not on file [~~at the retirement office]~~ prior to the start of the retired member's term of appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for a retired member reemployed as a school resource officer pursuant to KRS 158.441 effective in the month after a valid[completed] Form 6766 and supporting documentation are on file [~~at the retirement office]~~.

(5)(4)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical[health] insurance plan premiums paid by the systems for a retired member reemployed as a Kentucky State Police school resource officer pursuant to KRS 158.441 for a term of appointment of no more than one (1) year if a valid[completed] Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are on file [~~at the retirement office]~~ prior to the start of the retired member's term of appointment.

(b) If a valid[completed] Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are not on file [~~at the retirement office]~~ prior to the start of the retired member's term of appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for a retired member reemployed as a Kentucky State Police school resource officer pursuant to KRS 158.441 effective in the month after a valid[completed] Form 6767 and supporting documentation are on file [~~at the retirement office]~~.

(6)(5)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical[health] insurance plan premiums paid by the systems for a retired member reemployed as a police officer by a postsecondary institution pursuant to KRS 164.952 for a term of appointment of no more than one (1) year if a valid[completed] Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are on file [~~at the retirement office]~~ prior to the start of the retired member's term of appointment.

(b) If a valid[completed] Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are not on file [~~at the retirement office]~~ prior to the start of the retired member's term of appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for a retired member reemployed as a police officer by a postsecondary institution pursuant to KRS 164.952 in the month after a valid[completed] Form 6768 and supporting documentation are on file [~~at the retirement office]~~.

(7)(6) A participating employer shall not be eligible for exemption from payment of employer contributions or from reimbursing the systems for the costs of hospital and medical[health] insurance plan premiums for any retired members reemployed as a police officer pursuant to KRS 95.022 unless a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, is on file [~~at the retirement office]~~.

(8)(7)

(a) A participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file [~~at the retirement office]~~ shall be exempt from paying employer contributions and from reimbursing the systems for the costs of hospital and medical[health] insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 95.022 for a term of appointment of no more than one (1) year if a valid[completed] Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are on file [~~at the retirement office]~~ prior to the start of the retired member's term of appointment.

(b) If a valid[completed] Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are not on file [~~at the retirement office]~~ prior to the start of the retired member's term of appointment, then the participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file [~~at the retirement office]~~ shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 95.022 effective in the month after a valid[completed] Form 6770 and supporting documentation are on file [~~at the retirement office]~~.

(9)(8)

(a) For each [~~Each~~] subsequent term of reappointment after the initial term of appointment listed on the valid[completed] Form 6770, City Appointment of Retired Police Officer, described in subsection (7) of this section, the participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file shall be exempt from paying employer contributions and hospital and medical[health] insurance plan premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 95.022 for a term of reappointment of no more than one (1) year if a valid[completed] Form 6774, City Recertification of Retired Police Officer, is on file [~~at the retirement office]~~ prior to the start of the retired member's term of reappointment.

(b) If a valid[completed] Form 6774, City Recertification of Retired Police Officer, is not on file [~~at the retirement office]~~ prior to the start of the retired member's term of reappointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical[health] insurance plan premiums for retired member reemployed as a police officer pursuant to KRS 95.022 in the month after a valid[completed] Form 6774 is on file [~~at the retirement office]~~.

(10) If the appropriate form and is required by [~~indicated in~~] this section/subsection is not on file, then the employer shall not be exempt from paying employer contributions and reimbursement of hospital and medical insurance plan premiums.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement", June 2023;

(b) Form 6751, "Employer Certification Regarding Reemployment[,"], December 2023 [~~March 2022~~];

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- (c)(b) Form 6752, "Employer Certification of Independent Contractor/Leased Employee[.]", ~~December 2023~~[April 2024];
- (d)(e) Form 6753, "Employer Certification of Volunteer[.]", ~~December 2023~~[April 2024];
- (e)(d) Form 6754, "Member Reemployment Certification[.]", ~~December 2023~~[April 2024];
- (f)(e) Form 6760, "County Police or Sheriff Appointment of Retired Police Officer[.]", ~~December 2023~~[March 2022];
- (g)(f) Form 6764, "Recertification of Retired Police Officer[.]", ~~December 2023~~[June 2019];
- (h)(g) Form 6766, "Appointment of Retired School Resource Officer[.]", ~~December 2023~~[March 2022];
- (i)(h) Form 6767, "Appointment of Kentucky State Police School Resource Officer[.]", ~~December 2023~~[March 2022];
- (j)(i) Form 6768, "Postsecondary Institution Appointment of Retired Police Officer[.]", ~~December 2023~~[March 2022];
- (k)(j) Form 6769, "Certification of Employed Police Officers Calendar Year 2015[.]", ~~December 2023~~[July 2016];
- (l)(k) Form 6770, "City Appointment of Retired Police Officer[.]", ~~December 2023~~[March 2022];
- (m)(l) Form 6774, "City Recertification of Retired Police Officer[.]", ~~December 2023~~[July 2016]; and
- (n)(m) Internal Revenue Service Publication 1779, "Independent Contractor or Employee[.]", March ~~2023~~[2012].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the Authority's Web site at kyret.ky.gov.

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**FINANCE AND ADMINISTRATION CABINET  
Kentucky Public Pensions Authority  
(As Amended at ARRS, March 11, 2024)**

**105 KAR 1:455. In line of duty Hazardous Retirement Disability Benefits.**

RELATES TO: KRS ~~2.110, 16.505-16.652, [16.582, ]~~61.505, 61.510-~~61.705, [61.542, 61.592, 61.610, 61.615, 61.640, 61.665, 61.685, 61.691, ]~~78.510-~~78.852[, 78.545, 78.5518, 78.5524, 78.5528, 78.5532]~~

STATUTORY AUTHORITY: KRS 61.505(1)(g), ~~[and]~~ (3)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. KRS 16.582 and 78.5524 establish hazardous disability retirement benefits for employees in hazardous positions who are disabled from an act in line of duty. This administrative regulation establishes the procedures for filing an application or reapplication for in line of duty hazardous disability retirement benefits and total and permanent in line of duty hazardous disability retirement benefits, and the appeal procedures if denied.

Section 1. Definitions.

(1) "Applicant" means a participant who has applied or is applying for ***in line of duty*** (ILOD) disability or total and permanent ILOD disability in accordance with KRS 16.582 and 78.5524.

(2) "Dependent child benefit" means a retirement benefit payable to a dependent child as provided by KRS 16.582(6)(b) and (7)(b) and 78.5524(6)(b) and (7)(b).

(3) "Full-time student" means a person:

(a) Enrolled in a postsecondary program of study that meets the full-time student requirements of the institution in which he or she is enrolled;

(b) Enrolled in a continuing education or training program that meets the full-time requirements of the program or institution in which he or she is enrolled; or

(c) Enrolled in high school or a GED program that meets the full-time student requirements of the program or institution in which he or she is enrolled.

(4) "ILOD disability" means a form of disability retirement benefits that requires a disability that was due to an act in line of duty.

(5) "***Medical examiner***" means ***independent physicians licensed in Kentucky who evaluate medical, employment, and other information in accordance with KRS 61.665 and 78.545.***

(6) "Retirement benefit" means the retirement allowance as defined by KRS 16.505(12), 61.510(16), and 78.510(16).

(7)(6) "Self-Service Web site" means the secure Member Self-Service or Retiree Self-Service agency Web site at <https://myretirement.ky.gov>.

(8)(7) "Submit" means the employer required form, documentation, report, or payment has been received by the retirement office via mail, fax, electronic mail, the Employer Self Service Web site, or other mode specifically detailed in this administrative regulation.

(9)(8) "Total and permanent ILOD disability" means a form of disability retirement benefits that requires a total and permanent disability that was due to an act in line of duty.

Section 2. Use of Third-party Vendors. Subject to KRS 61.505(3)(d), the agency may contract with third-party vendors to provide independent, licensed physicians to serve as medical examiners pursuant to KRS 61.665 and 78.545, and additional persons to fulfill non-physician roles throughout the ILOD disability or total and permanent ILOD disability application and review process.

Section 3. Documentation of applicant's last day of paid employment.

(1) The applicant's last day of paid employment shall either be certified by the applicant's employer, or by a written statement filed by the applicant and corroborated by the reporting information received by the agency or the agency's third-party vendor from the applicant's employer.

(2) In accordance with KRS 61.685 and 78.545, the applicant's last day of paid employment may be corrected at any time upon discovery of any error or omission in the agency's records.

Section 4. Time Period Requirements.

(1)

(a) An application or reapplication for ILOD disability or total and permanent ILOD disability shall be filed by the end of day twenty-four (24) months from the applicant's last day of paid employment in a regular full-time position.

(b) The time period for filing shall begin on the day after the last day of paid employment in a regular full-time position and shall end at the end of day on the 730<sup>th</sup> calendar day.

(2) If the application or reapplication is not filed within the time period prescribed by subsection (1) of this section, except as provided in subsection (3) of this section, then the application or reapplication is not timely, and the applicant shall not qualify for ILOD disability or total and permanent ILOD disability.

(3) If the end of any time period prescribed in this administrative regulation falls on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the time period shall be met if the application, documentation, form, or other requested information is filed or submitted no later than the end of day on the next business day following the weekend or holiday.



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Section 5. Application or Reapplication for ILOD Disability or Total and Permanent ILOD Disability.

(1) An application or reapplication for ILOD disability or total and permanent ILOD disability pursuant to KRS 16.582 and 78.5524 shall be made by completing and filing a valid Form 6000, Notification of Retirement, indicating the applicant's alleged disability is due to an act in line of duty. If available, a Workers' Compensation incident report shall be filed with the Form 6000.

(2)

(a) Once an application or reapplication pursuant to subsection (1) of this section is received by the agency, the agency or its third-party vendor shall notify the applicant of the following additional requirements that shall be completed and filed no later than the end of day 180 calendar days from filing a valid Form 6000:

1. A valid Form 8035, Employee Job Description;

2. A valid Form 8040, Prescription and Nonprescription Medications;

3. All supporting objective medical evidence;

4. A valid Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information; and

5. If the Workers' Compensation incident report was not filed with the application or reapplication, then a Workers' Compensation incident report, or a valid Form 8480, Certification of Statement of Disability – Act in the Line of Duty, indicating one (1) of the following:

a. The applicant is alleging that he or she is disabled due to an act in line of duty, but cannot provide an incident report; or

b. The applicant is not alleging that he or she is disabled due to an act in line of duty. If the applicant indicates he or she is not alleging disability due to an act in line of duty, the application or reapplication will not be reviewed for ILOD disability or total and permanent ILOD disability.

(b) The agency or the agency's third-party vendor shall provide the applicant's employer with a Form 8030, Employer Job Description. The employer shall have until the end of day 180 calendar days from the date of the filed valid Form 6000, Notification of Retirement, to complete and submit the valid Form 8030.

(3) A reapplication for ILOD disability or total and permanent ILOD disability based on the same claim of incapacity shall only be considered if accompanied by new objective medical evidence or new evidence concerning the act in line of duty that was not considered with previous applications.

(4)

~~[(a)]~~ Once all requirements established in ~~subsections[subsection]~~ (1) ~~through [ ](3)~~ of this section are on file or submitted, the agency or the agency's third-party vendor shall review and evaluate the documentation ~~[in accordance with KRS 61.665 and 78.545]~~. Upon review, the agency or its third-party vendor may ~~request~~:

~~1. Request the applicant complete an independent medical or psychological evaluation in accordance with Section 6 of this administrative regulation; or~~

~~2. Request] additional information including additional objective medical evidence, information about the applicant's job duties and accommodations, documentation relating to Workers' Compensation claims, police or other crime reports from the employer or applicant, and any other relevant information. If the employer or applicant fail to return the requested information by the end of day sixty (60) calendar days from the date the request for additional information was provided, the agency or the agency's third-party vendor shall make a determination using the information on file.~~

~~(5) If the requirements established in this section are:~~

~~(a) Filed or submitted within the time periods prescribed in this section, the agency or the agency's third-party vendor shall provide to the medical examiner or examiners the application or reapplication for disability retirement benefits and all forms and documentation received; or~~

~~(b) [If all requirements established in this section are ]~~Not on file or submitted within the prescribed time period, the request for ILOD disability or total and permanent ILOD disability shall be void. The Form 6000, Notification of Retirement, shall still be reviewed for other benefits for which the applicant may be entitled.

Section 6. Medical or Psychological Examination Requested at the Expense of the Agency.

(1) ~~[(#)]~~The agency or the ~~medical examiner or examiners may request that the applicant complete[agency's—third-party vendor recommends]~~ an independent medical or psychological examination~~[—]~~, including ~~a~~ physical or mental functional ~~evaluation[evaluations]~~ or ~~assessment[assessments—be conducted]~~ pursuant to KRS 61.665(2)(j) and 78.545, or KRS 61.665(3)(c) and 78.545, ~~if requested~~, a Form 8025, Authorization for Independent Medical or Psychological Examination and Release of Medical Information, will be provided to the applicant.

(a) The applicant shall complete and file a valid Form 8025 by the end of day sixty (60) calendar days from the date the Form 8025 is provided.

(b) Once the valid Form 8025 is filed, the applicant shall be notified in writing of the date, time, and location of the appointment. Records from the examination shall be used in determining eligibility for ILOD disability, total and permanent ILOD disability, or any other disability benefits for which the applicant may be entitled.

(c) If the applicant fails to file a valid Form 8025 within the prescribed time period, or fails or refuses to complete a scheduled medical or psychological examination, the agency or the agency's third-party vendor shall make a determination using the medical information on file.

(d) If the applicant fails to appear at the medical or psychological examination or fails to cancel the appointment within the time period required in the notice of appointment, the applicant shall be responsible for payment of any charges associated with the medical or psychological examination.

(2)

(a) The agency shall reimburse the applicant for expenses associated with the medical or psychological examination in the same manner as prescribed in 105 KAR 1:210, Section 8.

(b)

1. To receive reimbursement for mileage, actual parking costs, and any actual bridge or highway toll charges, the applicant shall file a valid Form 8846, Travel Voucher for Independent Examination, and all necessary receipts no later than end of day fifteen (15) calendar days from the date of the examination or evaluation.

2. If the applicant fails to file the Form 8846 by the end of day fifteen (15) calendar days from the date of the examination or evaluation, the applicant shall not be eligible for reimbursement.

Section 7. Determining Applicant's Eligibility for ILOD Disability or Total and Permanent ILOD Disability.

(1)

(a) An applicant may qualify for disability retirement benefits if he or she has sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), and 78.615(1). The service requirements shall be waived for ILOD disability or total and permanent ILOD disability pursuant to KRS 16.582(2)(a) and 78.5524(2)(a).

(b) To be eligible for any type of disability retirement allowance, the applicant shall receive a satisfactory disability determination pursuant to KRS 61.665.

(2) ~~(a)~~ The agency or the agency's third-party vendor shall evaluate and determine eligibility for ILOD disability or total and permanent ILOD disability in accordance with KRS 16.582 and 78.5524, and shall notify the applicant of the findings.

~~(b) Prior to determining eligibility for ILOD disability or total and permanent ILOD disability, the agency or the medical examiner or examiners may request that the applicant complete an independent medical or psychological examination in accordance with Section 6 of this administrative regulation.~~

(3) Denial of ILOD disability, total and permanent ILOD disability, or both.

(a) The applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to complete one (1) of the options listed in paragraph (b) of this subsection if:

1. The application is denied for ILOD disability, total and permanent ILOD disability, or both; and

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2.

a. The applicant did not meet the service requirements for hazardous disability or total and permanent disability pursuant to subsection (1) of this section; or

b. Is approved for hazardous disability or total and permanent disability.

(b)

1. File additional supporting information in accordance with Section 8 of this administrative regulation; or

2. Request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the ILOD disability, total and permanent ILOD disability, or both.

(c) The applicant shall receive any approved hazardous disability or total and permanent disability within the time period requirements established by Section 11(1) of this administrative regulation while awaiting a determination or during the pendency of the appeal regarding ILOD disability, total and permanent ILOD disability, or both. An adverse determination or denial of the appeal shall not affect the benefits for which the applicant has already been approved or is already receiving.

(4) Approval of ILOD disability and denial of total and permanent ILOD disability.

(a) If the application is approved for ILOD disability, but denied for total and permanent ILOD disability, the applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to complete one (1) of the following:

1. File additional supporting information in accordance with Section 8 of this administrative regulation; or

2. Request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the total and permanent ILOD disability.

(b) The applicant shall receive the approved ILOD disability within the time period requirements established by Section 11(1) of this administrative regulation while awaiting a determination or during the pendency of the appeal regarding total and permanent ILOD disability. An adverse determination or denial of the appeal shall not affect the benefits for which the applicant has already been approved or is already receiving.

(5) Denial of ILOD disability, total and permanent ILOD disability, hazardous disability, and total and permanent disability. If the application is denied for ILOD disability, total and permanent ILOD disability, hazardous disability, and total and permanent disability, the applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to complete one (1) of the following:

(a) File additional supporting information in accordance with Section 8 of this administrative regulation; or

(b) Request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the ILOD disability, total and permanent ILOD disability, hazardous disability, total and permanent disability, or all that are applicable.

(6)

(a) The denial of ILOD disability or total and permanent ILOD disability may only be appealed if the applicant indicated on the valid Form 6000, Notification of Retirement, or the valid Form 8480, Certification of Statement of Disability – Act In the Line of Duty, that he or she was disabled due to an act in line of duty. Responses on the valid Form 8480 shall supersede responses on the valid Form 6000.

(b) The denial of total and permanent disability alone is not appealable.

(7) Denial of ILOD disability, total and permanent ILOD disability, hazardous disability, or total and permanent disability shall not affect any other benefits to which the applicant may be entitled.

Section 8. Additional Supporting Information.

(1)

(a) Upon denial of ILOD disability or total and permanent ILOD disability in accordance with Section 7 of this administrative regulation, the agency or its third-party vendor shall provide the applicant with a Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information.

(b) The agency or its third-party vendor shall review and evaluate the additional supporting information upon receipt of the valid Form 8001 and additional supporting information, including additional medical information, information about his or her job duties and accommodations, documentation relating to Workers' Compensation claims, police or other crime reports, or other required documentation, if/when filed within the required time period.

(2) Once the agency or its third-party vendor completes the evaluation of the additional supporting information, the agency or its third-party vendor shall make a determination and notify the applicant of the findings.

(a)

1. The applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the ILOD disability, total and permanent ILOD disability, or both, if the applicant:

a. ~~[The application]~~ Is denied for ILOD disability, total and permanent ILOD disability, or both; and

b. Does not meet the service requirements for hazardous disability or total and permanent disability pursuant to Section 7(1) of this administrative regulation; or

c. Is approved for hazardous disability or total and permanent disability.

2. The applicant shall receive any approved hazardous disability or total and permanent disability within the time period requirements established by Section 11(1) of this administrative regulation during the pendency of appeal regarding ILOD disability, total and permanent ILOD disability, or both. A denial of the appeal shall not affect the benefits for which the applicant has already been approved or is already receiving.

(b)

1. If the application is approved for ILOD disability, but denied for total and permanent ILOD disability, the applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the total and permanent ILOD disability.

2. The applicant shall receive the approved ILOD disability within the time period requirements established by Section 11(1) of this administrative regulation during the pendency of the appeal regarding total and permanent ILOD disability. A denial of the appeal shall not affect the benefits for which the applicant has already been approved or is already receiving.

(c) Except as provided in Section 7(6) of this administrative regulation, if the application is denied for ILOD disability, total and permanent ILOD disability, and hazardous disability, the applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the following:

1. Denial of the ILOD disability;
2. Total and permanent ILOD disability;
3. Hazardous disability; or
4. All that are applicable.

Section 9. Reapplication for ILOD Disability or Total and Permanent ILOD Disability While Prior Application or Reapplication is Pending.

(1) If a reapplication for ILOD disability or total and permanent ILOD disability that complies with KRS 16.582 and 78.5524 and Section 5 of this administrative regulation is filed while a prior application or reapplication is pending or within the statutory time periods for appeal, the agency shall process according to the following:

(a) If there is a prior application or reapplication pending a determination, including when the applicant has submitted additional supporting information and the[such] information is pending a determination as prescribed in Section 8 of this administrative regulation, then the subsequent reapplication shall be accepted solely for the purpose of designating a new beneficiary in

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accordance with KRS 61.542(4) and 78.545, and shall not be reviewed.

(b) If there is a prior denial that is still within the statutory time period to appeal the determination and the applicant has not submitted additional supporting information as prescribed in Section 8 of this administrative regulation or requested an appeal in accordance with Section 16 of this administrative regulation, then:

1. The subsequently filed reapplication shall be found as a notice of intent to not submit additional supporting information or request an administrative hearing to appeal the previous denial determination; and

2. The reapplication shall be processed by the agency in accordance with this administrative regulation unless the applicant files a written statement indicating the subsequently filed reapplication was filed solely for the purpose of designating a new beneficiary in accordance with KRS 61.542(4) and 78.545. The written statement shall be filed by the end of day fifteen (15) calendar days from the date of the notice indicated in subsection (2) of this section.

(c) If there is a prior denial, the applicant has requested an administrative hearing to appeal the denial, and it is prior to a Final Order of the Disability Appeals Committee (DAC), then:

1. The subsequently filed reapplication shall be found as a notice of intent to dismiss the request for an administrative hearing;

2. The reapplication shall be processed by the agency in accordance with this administrative regulation unless the applicant files a written statement indicating the subsequently filed reapplication has been filed solely for the purpose of designating a new beneficiary in accordance with KRS 61.542(4) and 78.545. The written statement shall be filed by the end of day fifteen (15) calendar days from the date of the notice indicated in subsection (2) of this section; and

3. The subsequently filed reapplication shall not be reviewed by the agency until thirty-one (31) calendar days after the entry of a Final Order of DAC dismissing the previously requested administrative hearing to appeal, except that a new beneficiary designated on the subsequently filed reapplication in accordance with KRS 61.542 and 78.545 shall be effective immediately.

(d)

1. If there is a prior denial, a Final Order of DAC has been issued affirming the prior denial, and the applicant[claimant] has requested an appeal of the Final Order or is within the statutory time period to do so, then the subsequently filed reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542(4) and 78.545. The reapplication shall not be reviewed unless the applicant files one (1) of the following by the end of day fifteen (15) calendar days from the date of the notice indicated in subsection (2) of this section:

a. A written statement that he or she shall not appeal the Final Order of DAC; or

b. A final unappealable Order of a court with jurisdiction over the matter.

2. If the applicant files the documentation indicated in subparagraph [paragraph (d)]1.a. or b. of this paragraph[subsection], then the subsequently filed reapplication shall be reviewed by the agency thirty-one (31) calendar days after the entry of a Final Order of DAC, or after a final unappealable Order of a court with jurisdiction over the matter has been entered.

(2) If a subsequent reapplication for ILOD disability or total and permanent ILOD disability that complies with Section 5 of this administrative regulation is filed, the applicant may receive notification of how the reapplication shall be administered based on the status of the previously filed application or reapplication and in accordance with subsection (1) of this section.

Section 10. Voiding the Form 6000, Notification of Retirement.

(1) The Form 6000, Notification of Retirement, shall be void if:

(a) The Form 6000 is invalid or withdrawn;

(b) The applicant is approved for benefits, but fails to complete the requirements of Section 11 of this administrative regulation;

(c) The applicant died during the pendency of a determination, is approved for benefits after his or her death, and the beneficiary, representative of the deceased applicant's estate, or trustee fails to

complete the requirements of Section 14 of this administrative regulation; or

(d) The Form 6000 does not result in the applicant receiving a retirement benefit and all applicable time periods to appeal as provided in Sections ~~7 through 13~~ of this administrative regulation have expired.

(2)

(a) If an applicant's Form 6000, Notification of Retirement, is void, the beneficiary or beneficiaries and contingent beneficiary or beneficiaries designated on the most recently filed valid Form 2035, Beneficiary Designation, shall remain in full force and effect, except as provided in paragraph (b) of this subsection.

(b) If the applicant was receiving an ongoing benefit based on a previously filed valid Form 6000, Notification of Retirement, then the beneficiary or beneficiaries and contingent beneficiary or beneficiaries designated on the Form 6000 indicated in this paragraph shall remain in full force and effect.

Section 11. Administration of Benefits Upon Approval of ILOD Disability or Total and Permanent ILOD Disability.

(1)

(a) Once an applicant is approved for hazardous disability, total and permanent disability, ILOD disability, or total and permanent ILOD disability, the applicant shall complete all requirements to begin receiving the benefit for which he or she was approved no later than six (6) months from the date the notice of approval was provided in accordance with KRS 61.590(5)(b) and 78.545. Appealing the denial of ILOD disability or total and permanent ILOD disability, or both, does not affect this requirement.

(b) If the applicant does not comply with paragraph (a) of this subsection, the applicant shall forfeit his or her right to the benefit for which he or she was approved, and shall have no right to appeal the forfeiture. This shall not preclude the applicant from:

1. Filing a reapplication for hazardous disability, ILOD disability, or total and permanent ILOD disability in accordance with KRS 16.582 and 78.5524, 105 KAR 1:210, and this administrative regulation; or

2. Filing for or receiving any other benefits that he or she may be eligible to receive.

(2) If the applicant received Social Security or Workers' Compensation benefits during the pendency of a determination, the applicant shall file detailed documentation of the benefits received in accordance with KRS 61.607, KRS 78.5530, and 105 KAR 1:210, Section 9.

(3) The agency shall provide the applicant the monthly payment options, as provided in 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, available on the Form 6010, Estimated Retirement Allowance. An applicant that was awarded Social Security or Workers' Compensation benefits during the pendency of a determination shall not be provided the Form 6010 until he or she complies with the requirements of subsection (2) of this section.

(a) The applicant shall complete and file a valid Form 6010 by the end of day six (6) months from the date the notification of approval for benefits was provided pursuant to KRS 61.590(5) and 78.545.

(b)

1. If the applicant selects an actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement payment option, he or she shall complete and file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, ~~for a Spouse~~ Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, selecting the option for payment.

2. If the applicant intends to have the funds rolled over directly into an IRA or other qualified plan, the applicant shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025 certifying that the rollover will be accepted.

(4)

(a) Approved benefits shall be paid retroactive to the first of the month following the month of the applicant's last day of paid employment in a regular full-time position.

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(b) Any increases provided under KRS 61.691 and 78.5518 shall be applied to the applicant's ILOD disability or total and permanent ILOD disability, as applicable, in determining the total retroactive payments owed and the monthly retirement allowance.

(5) Payment for benefits owed during the pendency of approval of ILOD disability or total and permanent ILOD disability shall be calculated accordingly:

(a) If the applicant did not receive any retirement benefits during the pendency of the approval, the applicant shall receive a payment for the retroactive period as prescribed in subsection (4) of this section.

(b)

1. If the applicant received other retirement benefits based on the same last date of paid employment during the pendency of the approval, the agency shall calculate and pay to the applicant the difference between the retirement benefit which was paid to the applicant and the ILOD disability or total and permanent ILOD disability payment owed.

2. The applicant shall not change the beneficiary named or the payment option selected upon early, normal, or any disability retirement benefit, except as provided in KRS 61.542(5)(a) ~~and~~ ~~61.542(5)(b)~~, and 78.545.

(c) If the applicant received Social Security or Workers' Compensation benefits, the agency shall calculate payment in accordance with 105 KAR 1:210, Section 9.

(6) Upon the completion of all requirements of this section and Section 13 of this administrative regulation, the applicant shall receive any applicable backpay and begin receiving the ~~monthly~~ ~~retirement benefit~~ ~~allowance~~ owed.

Section 12. Requirements for Dependent Child Benefits.

(1) If dependent child benefits are payable to a dependent child, each eligible dependent child or his or her parent or guardian shall file the following documents:

(a)

1. If the applicant is approved for ILOD disability, a valid Form 6456, Designation of Dependent Child; or

2. If the applicant is approved for total and permanent ILOD disability, a valid Form 6448, Designation of Dependent Child for Qualifying Total and Permanent Disability.

(b) If the dependent child is age eighteen (18) or over and a full-time student, written verification of full-time student status;

(c)

1. If the dependent child is age eighteen (18) or over and receives federal Social Security disability benefits, a copy of the most recent statement issued by the Social Security Administration indicating the dependent child is disabled; or

2. If the dependent child is being claimed as a qualifying child for tax purposes due to the dependent child's total and permanent disability, a copy of the applicant's most recent tax return showing the dependent child is totally and permanently disabled for tax purposes, or duly appointed order of the court specifying the dependent child is a disabled dependent child of the applicant;

(d)

1. A copy of the dependent child's birth certificate; or

2. A final order or decree of adoption which shall include his or her date of birth or other reliable proof of date of birth that may be used by the courts to verify date of birth; and

(e) If a dependent child is less than eighteen (18) years of age, a valid Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the dependent child has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, the guardian or conservator shall file a copy of the court order appointing the guardian or conservator.

(2)

(a) After the dependent child begins receiving dependent child benefits, the dependent child or the parent or guardian of the dependent child shall:

1. Notify the agency of the death or marriage of the dependent child;

2. If applicable, notify the agency if the dependent child ceases to be a full-time student;

3. If applicable, file a copy of the dependent child's written verification of full-time student status with the agency for each semester of study by the end of day thirty (30) calendar days following the start and by the end of day thirty (30) calendar days following the end of each semester; and

4. If applicable, notify the agency if the dependent child's disability status changes.

(b) The dependent child and the parent or guardian of the dependent child shall be responsible for repaying any dependent child benefits overpaid due to the failure of the dependent child or parent or guardian of the dependent child to provide the information required by paragraph (a) of this subsection.

~~(3)~~~~(5)~~

(a) Upon the completion of all requirements of this section and Section 13 of this administrative regulation, the dependent child shall begin receiving the benefit owed.

(b) Approved benefits shall be paid retroactive to the first of the month following the month of the applicant's last day of paid employment in a regular full-time position.

(c) Any increases provided under KRS 61.691 and 78.5518 shall be applied to the dependent child's benefits in determining the total retroactive payments owed and the monthly retirement allowance.

(d) Payment for benefits owed during the pendency of approval of ILOD disability or total and permanent ILOD disability shall be calculated accordingly:

1. If the dependent child did not receive dependent child benefits during the pendency of the approval, he or she shall receive a payment for the retroactive period as prescribed in paragraph (b) of this subsection.

2. If the dependent child received other dependent child benefits based on the same last date of paid employment during the pendency of the approval, the agency shall calculate and pay to the dependent child the difference between the dependent child benefit which was paid and the dependent child benefit owed.

Section 13. Distribution of Payments.

(1) The agency shall not disperse payment until the requirements of either subsection (2) or (3) of this section are complete and on file.

(2)

(a) Except as provided in subsection (3) of this section, to begin receiving payment, the applicant, beneficiary, representative of the deceased applicant's estate, trustee, dependent child, or parent or guardian of a dependent child, as applicable, shall authorize direct deposit to an account in a financial institution in the following way:

1. File a valid Form 6130, Authorization for Deposit of Retirement Payment, provide direct deposit information on the valid Form 6000, Notification of Retirement, or authorize direct deposit via the Self-Service Web site; and

2. Provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution, including any authorizations or information needed from the financial institution.

(b) At any time while receiving a monthly benefit, a recipient may change the designated institution by completing and filing a new valid Form 6130, Authorization for Deposit of Retirement Payment, or by updating the authorization for deposit of retirement payments on the Self-Service Web site ~~maintained by the agency~~.

(3) If the applicant, beneficiary, dependent child, or parent or guardian of a dependent child, as applicable, does not currently have an account with a financial institution, or his or her financial institution does not participate in the electronic funds transfer program, the applicant may receive benefits by check. To receive benefits by check, an applicant, beneficiary, dependent child, or the parent or guardian of a dependent child, as applicable, shall file a valid Form 6135, Request for Payment by Check.

(4) The most recently filed valid Form 6130, Authorization for Deposit of Retirement Payment, authorization for deposit of retirement payments on the Self-Service Web site, or valid Form 6135, Request for Payment by Check, shall control the payment or electronic transfer designation of the payable benefits.

Section 14. Death During ILOD Disability or Total and Permanent ILOD Disability Application Process.

(1) If the beneficiary is an estate, a duly entered or certified court order from a court with jurisdiction appointing the representative of the applicant's estate shall be on file.

(2) If the beneficiary is a trustee, a duly executed trust appointing him or her as the trustee shall be on file.

(3)

(a) If an applicant ~~[who is not receiving any retirement benefit] dies prior to being fully approved for ILOD disability or total and permanent ILOD disability; ~~and]~~~~

(b) A valid Form 6000, Notification of Retirement, that complies with Section 5 of this administrative regulation is on file; and

(c) The time period requirements established in Sections 4 ~~through [ ]~~ of this administrative regulation have not expired; then:

1. In order to proceed with the application or reapplication, the beneficiary named on the valid Form 6000, or the representative of the deceased applicant's estate or trust as applicable, shall file the following within the time period requirements established by ~~[Sections 4-9 of ]~~ this administrative regulation:

a. Any outstanding forms or documents required by Sections 5 ~~through [ ]~~ of this administrative regulation; and

b. Any additional relevant objective medical evidence and a valid Form 8002, Certification of Application for Disability Retirement and Supporting Medical Information.

2. ~~To [The beneficiary shall only] have the rights specified in subclauses i.-iv. [subparagraphs (a)-(d)] of clause b. of this subparagraph:~~

a. The beneficiary shall file [paragraph if he or she files] a valid Form 6008, Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member; or

b. If there are no monthly or lump-sum benefits payable to the beneficiary listed on the Form 6000 or the designated beneficiary is the estate or trust, the representative of the applicant's estate or trustee shall file a written statement that the application or reapplication for ILOD disability or total and permanent ILOD disability shall continue or be withdrawn as applicable.

~~i. [a.] The right to continue the application or reapplication, whether or not additional forms or documentation are needed. The beneficiary, or the representative of the deceased applicant's estate or trust as applicable, shall be subject to subsections (4) and (5) [subsection 4-6] of this section prior to payment of a disability retirement benefit owed. [;]~~

~~ii. [b.] The right to withdraw the application or reapplication whether or not additional forms or documentation are needed. If the required documentation as prescribed in this subsection [Form 6008] is not on file within the time period requirements established in Sections 5 through [ ] of this administrative regulation, the application or reapplication shall be withdrawn automatically. Withdrawal of the application or reapplication may impact the beneficiary as prescribed in Section 10(2) of this administrative regulation. [;]~~

~~iii. [c.] The right to submit additional supporting information in accordance with Section 8 of this administrative regulation if there is a denial of disability retirement benefits of any kind. The required documentation as prescribed in this subsection [Form 6008] shall be on file within the time period requirements to submit additional supporting information as provided in Section 8 of this administrative regulation. [; and]~~

~~iv. [d.] The right to request an administrative hearing if there is a denial of disability retirement benefits of any kind. The required documentation as prescribed in this subsection [Form 6008] shall be on file within the time period requirements to request an administrative hearing as provided in Sections 5 through [ ] of this administrative regulation.~~

3. ~~[If the beneficiary is an estate, then the beneficiary shall file a duly entered or certified court order from a court with jurisdiction appointing the representative of the applicant's estate within the time period requirements established by this subsection.~~

4. If the beneficiary, or the representative of the deceased applicant's estate or trust as applicable, does not file the required

forms and documentation within the time periods required by this administrative regulation and KRS 61.665 and 78.545, then the application or reapplication for disability retirement benefits of any kind shall not be processed by the agency.

~~(2)~~

~~(a) If an applicant who is receiving a monthly retirement benefit dies prior to being fully approved for ILOD disability or total and permanent ILOD disability;~~

~~(b) A valid Form 6000, Notification of Retirement, that complies with Section 5 of this administrative regulation is on file;~~

~~(c) Lump sum or monthly benefits are payable to the beneficiary listed on the Form 6000; and~~

~~(d) The time period requirements established by Sections 4-9 of this administrative regulation have not expired; then:~~

~~1. In order to proceed with the application or reapplication, the beneficiary named on the valid Form 6000 shall file the following within the time period requirements established in Sections 4-9 of this administrative regulation:~~

~~a. Any outstanding forms or documentation required by Sections 5-9 of this administrative regulation; and~~

~~b. Any additional relevant objective medical evidence and a valid Form 8002, Certification of Application for Disability Retirement and Supporting Medical Information.~~

~~2. The beneficiary shall file a valid Form 6008, Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member, to:~~

~~a. Continue the application or reapplication whether or not additional forms or documentation are needed. The beneficiary shall be subject to subsection 4-6 of this section prior to payment of a disability retirement benefit owed;~~

~~b. Withdraw the application or reapplication whether or not additional forms or documentation are needed. If the Form 6008 is not on file within the time period requirements established in Sections 5-9 of this administrative regulation, the application or reapplication shall be withdrawn automatically.~~

~~c. Have the right to submit additional supporting information in accordance with Section 8 of this administrative regulation if there is a denial of disability retirement benefits of any kind. The Form 6008 shall be on file within the time period requirements to submit additional supporting information as provided in Section 8 of this administrative regulation; and~~

~~d. Have the right to request an administrative hearing if there is a denial of disability retirement benefits of any kind. The Form 6008 shall be on file within the time period requirements to request an administrative hearing as provided in Sections 5-9 of this administrative regulation.~~

~~3. If the beneficiary does not file the required forms and documentation within the time periods required by this administrative regulation and KRS 61.665 and 78.545, then the application or reapplication for disability retirement benefits of any kind shall not be processed by the agency.~~

~~(3)~~

~~(a) If an applicant who is receiving a monthly retirement benefit dies prior to being fully approved for ILOD disability or total and permanent ILOD disability;~~

~~(b) A valid Form 6000, Notification of Retirement, that complies with Section 5 of this administrative regulation is on file;~~

~~(c) No monthly or lump-sum benefits are payable to the beneficiary listed on the Form 6000 or the designated beneficiary is the estate or trust; and~~

~~(d) The time period requirements established in Sections 4-9 of this administrative regulation have not expired; then:~~

~~1. In order to proceed with the application or reapplication, the representative of the deceased applicant's estate or the trustee shall file the following no later than the time period requirements established in Sections 4-9 of this administrative regulation:~~

~~a. Any outstanding forms or documentation required by Sections 5-9 of this administrative regulation; and~~

~~b. Any additional relevant objective medical evidence and a valid Form 8002, Certification of Application for Disability Retirement and Supporting Medical Information.~~

~~2. The representative of the applicant's estate shall file a duly entered or certified court order from a court with jurisdiction appointing the person(s) as representative of the applicant's estate, and a written statement that the application or reapplication for ILOD disability or total and permanent ILOD disability shall continue or be withdrawn as applicable. Both requirements of this paragraph shall be on file to:~~

~~a. Continue the application or reapplication whether or not additional forms or documentation are needed. The representative of the applicant's estate shall be subject to subsection 4-6 of this section prior to payment of a disability retirement benefit owed;~~

~~b. Withdraw the application or reapplication whether or not additional forms or documentation are needed. If the requirements of this subsection are not on file within the time period requirements established in Sections 5-9 of this administrative regulation, the application or reapplication shall be withdrawn automatically;~~

~~c. Have the right to submit additional supporting information in accordance with Section 8 of this administrative regulation if there is a denial of disability retirement benefits of any kind. The requirements of this subsection shall be on file within the time period requirements to submit additional supporting information as provided in Section 8 of this administrative regulation; and~~

~~d. Have the right to request an administrative hearing if there is a denial of disability retirement benefits of any kind. The requirements of this subsection shall be on file within the time period requirements to request an administrative hearing as provided in Sections 5-9 of this administrative regulation.~~

~~3. The trustee shall file a written statement that the application or reapplication for ILOD disability or total and permanent ILOD disability shall continue or be withdrawn as applicable. The requirements of this paragraph shall be on file to:~~

~~a. Continue the application or reapplication whether or not additional forms or documentation are needed. The representative of the applicant's estate shall be subject to subsection 4-6 of this section prior to payment of a disability retirement benefit owed;~~

~~b. Withdraw the application or reapplication whether or not additional forms or documentation are needed. If the requirements of this subsection are not on file within the time period requirements established in Sections 5-9 of this administrative regulation, the application or reapplication shall be withdrawn automatically;~~

~~c. Have the right to submit additional supporting information in accordance with Section 8 of this administrative regulation if there is a denial of disability retirement benefits of any kind. The requirements of this subsection shall be on file within the time period requirements to submit additional supporting information as provided in Section 8 of this administrative regulation; and~~

~~d. Have the right to request an administrative hearing if there is a denial of disability retirement benefits of any kind. The requirements of this subsection shall be on file within the time period requirements to request an administrative hearing as provided in Sections 5-9 of this administrative regulation.~~

~~4. If the representative of the deceased applicant's estate or the trustee does not file the required forms and documentation within the time periods required by this administrative regulation and KRS 61.665 and 78.545, then the application or reapplication for disability retirement benefits of any kind shall not be processed by the agency.]~~

(4) If the beneficiary, representative of the deceased applicant's estate, or trustee provides all needed forms and documentation as provided in subsection (1)[subsections (1)-(3)] of this section and Section 11(2) of this administrative regulation, and benefits are approved:

(a) The agency shall provide the beneficiary, or the representative of the deceased applicant's estate or trust as applicable, with a Form 6810, Certification of Beneficiary. The beneficiary, or the representative of the deceased applicant's estate or trust as applicable, shall complete and file a valid Form 6810.

(b) If the applicant was not receiving a retirement benefit prior to his or her death, the agency shall provide the beneficiary, or the representative of the deceased applicant's estate or trust as applicable, with the payment options available on the Form 6010, Estimated Retirement Allowance. The beneficiary, or the representative of the deceased applicant's estate or trust as applicable, shall complete and file a valid Form 6010.

1. If the beneficiary, representative of the deceased applicant's estate, or trust is eligible for and selects an actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement payment option, he or she shall complete and file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, [or a Spouse] Beneficiary, or Alternate Payee Regarding[-of] an Eligible Rollover Distribution, indicating the payment option elected.

2. If the beneficiary, representative of the deceased applicant's estate, or trustee intends to have the funds rolled over directly into an IRA or other qualified plan, the beneficiary, representative of the deceased applicant's estate, or trustee shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025 certifying that the rollover will be accepted.

(c) If the applicant was receiving a retirement benefit prior to his or her death, the beneficiary, the deceased applicant's estate, or trust shall receive benefits based on the payment option designated by the applicant.

(d) Upon the completion of all requirements of this section and Section 13 of this administrative regulation, the beneficiary~~[-]~~, the deceased applicant's estate, or trust shall receive or begin receiving the benefit owed.

(5)

(a) If the applicant received any retirement benefits while awaiting a disability determination of any kind, a[the] beneficiary that is not the deceased applicant's estate or trust is not eligible to receive the difference between what the applicant already received and the disability back payments owed for the time period from the applicant's disability retirement date through the end of the month in which the applicant died. When this occurs, the deceased applicant's estate or trust shall receive any back payment owed for the time period indicated in this paragraph.

(b) If the applicant never received retirement benefits of any kind, the beneficiary, or the representative of the deceased applicant's estate or trust as applicable, is eligible to receive the disability back payments owed for the time period from the applicant's disability retirement date through the date of approval of the disability retirement benefit.

Section 15. Recipient's ILOD Disability or Total and Permanent ILOD Disability Discontinued Upon Review. If, upon review in accordance with KRS 61.610, 61.615, 78.5528, or other applicable statute, the agency or its third-party vendor determines:

(1) A recipient of total and permanent ILOD disability no longer meets eligibility requirements, then the agency or its third-party vendor shall determine if the recipient is qualified and remains eligible for ILOD disability in accordance with KRS 16.582 and 78.5524, and this administrative regulation; or

(2) A recipient of ILOD disability no longer meets eligibility requirements, then the agency shall determine if the recipient is qualified and remains eligible for early or normal retirement benefits in accordance with KRS 61.592 and 78.5520.

Section 16. Right to Appeal.

(1) In accordance with KRS 61.665 and 78.545, a request for a formal hearing to appeal a denial or discontinuance determination shall be made by filing a written request containing a short and plain statement of the issues being appealed.

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(2) The hearing shall be conducted in accordance with KRS Chapter 13B and 105 KAR 1:215.

(3) The hearing officer presiding over an administrative hearing shall review the administrative record and any records introduced at the administrative hearing.

(a) The determination of other state and federal agencies' approval of benefits including the Kentucky Department of Workers' Claims and the Social Security Administration, may support a final determination if accompanied by underlying objective medical evidence or vocational evidence.

(b) Written statements from medical providers within the administrative record shall not themselves be objective medical evidence, but may be relied upon if accompanied by, and reviewed in concert with, other supporting objective medical evidence.

(4) The final determination shall not be bound by factual or legal findings of other state or federal agencies. The final determination shall be based on objective medical evidence and vocational records, including objective medical evidence and vocational records contained within or that accompany a determination by another state or federal agency.

(5) Once a final determination is issued, the person who filed the appeal shall be notified of the final order of the Disability Appeals Committee (DAC) in accordance with KRS 61.615(3)(g) and 78.5528(3)(g).

(6) All evidentiary filings made during an administrative hearing process to appeal the denial of an application or reapplication shall be included in the information reviewed in a subsequently filed reapplication.

Section 17. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 2035, "Beneficiary Designation", updated September 2022;

(b) Form 6000, "Notification of Retirement", updated June 2023;

(c)(b) Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member", updated November 2023;

(d)(c) Form 6010, "Estimated Retirement Allowance", updated April 2021;

(e)(d) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution", updated June 2023;

(f)(e) Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", updated June 2023;

(g)(f) Form 6130, "Authorization for Deposit of Retirement Payment", updated June 2023;

(h)(g) Form 6135, "Request for Payment by Check", updated June 2023;

(i)(h) Form 6448, "Designation of Dependent Child for Qualifying Total and Permanent Disability", updated November 2023;

(j)(i) Form 6456, "Designation of Dependent Child", updated November 2023;

(k)(j) Form 6810, "Certification of Beneficiary", updated April 2021;

(l)(k) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information", updated November 2023;

(m)(l) Form 8002, "Certification of Application for Disability Retirement and Supporting Medical Information", updated November 2023;

(n)(m) Form 8025, "Authorization for Independent Medical or Psychological Examination and Release of Medical Information", updated November 2023;

(o)(n) Form 8030, "Employer Job Description", updated June 2023;

(p)(o) Form 8035, "Employee Job Description", updated November 2023;

(q)(p) Form 8040, "Prescription and Nonprescription Medications", updated November 2023;

(r)(q) Form 8480, "Certification of Statement of Disability – Act in the Line of Duty", updated November 2023; and

(s)(r) Form 8846, "Travel Voucher for Independent Examination", updated November 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the agency's Web site at [kyret.ky.gov](http://kyret.ky.gov).

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**FINANCE AND ADMINISTRATION CABINET  
Kentucky Public Pensions Authority  
(As Amended at ARRS, March 11, 2024)**

**105 KAR 1:470. Agency communications.**

RELATES TO: KRS 16.505 ~~–[to]~~ 16.652, 61.510 ~~–[to]~~ 61.705, ~~and~~ 78.510 ~~–[to]~~ 78.852

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. This administrative regulation establishes how the Kentucky Public Pensions Authority shall communicate with members, retired members, beneficiaries, alternate payees, and other recipients of a retirement allowance, and the procedures to change communication preferences.

Section 1. Definitions.

(1) "Agency account" means the member account or other agency issued account assigned to a COR.

(2) "COR" means a communications recipient; including a member, retired member, beneficiary, alternate payee, or recipient.

(3) "Electronic notification" means the process of delivering information, messages, or alerts through digital means, such as email, Short Message Service (SMS), Multimedia Messaging Service (MMS) notification, push notifications, or other digital communication methods.

(4) "Invalid email address" means an email address that is not valid or is no longer operational or associated with the COR, as verified by the agency through a COR's self-report, an audit, or other means.

(5) "Paperless communication" means communication provided by the agency in an electronic format through electronic notifications and the Self-Service Web site.

(6) "Self-Service Web site" means the secure Member Self-Service or Retiree Self-Service agency Web site at [myretirement.ky.gov](http://myretirement.ky.gov) that allows a COR to access his or her agency account information and services related to that account.

(7) "Valid email address" means an email address the agency has on file for a COR that is operational and able to receive messages, or has not otherwise been deemed an invalid email address by the agency.

(8) "Valid physical mailing address" means the mailing address on file for a COR where he or she is able to receive U.S. mail, including: ~~[-]~~

(a) A current street address;

(b) A Post Office box registered with the United States Postal Service; or

(c) A private mailbox registered with a commercial mail receiving agency established pursuant to the United States Postal Service regulation.

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### Section 2. Agency Default to Paperless.

(1) Beginning May 1, 2024, the agency shall default to paperless communications for all CORs who have a valid email address on file. The agency shall provide CORs with notification of the default to paperless communication and information on how to opt-out.

(2)

(a) Any COR that has a valid email address on file as of May 1, 2024, that has not elected to opt-out in accordance with Section 5 of this administrative regulation, shall receive paperless communication from the agency, apart from limited exceptions as specified in Section 10 of this administrative regulation.

(b) A COR who has a valid email address on file, but does not have a valid physical mailing address on file, shall not be given the ability to opt-out.

(3) Any COR that does not have a valid email address on file as of May 1, 2024, shall not receive paperless communication until the COR's communication preferences change in accordance with Section 6 of this administrative regulation.

### Section 3. Email Addresses.

(1)

(a) If a COR needs to add or update his or her email address, the COR shall complete one (1) of the following:

1. Update and save the email address on the Self-Service Web site;

2. Update the email address via phone by calling the agency and providing his or her agency issued personal identification number (PIN);

3. File a valid Form 2040, Change of Contact Information; or

4. Provide the email address on any valid filed agency form that has the option to update the email address.

(b)

1. The most recent update to the COR's email address that complies with this subsection shall be the email address used for paperless communication.

2. The agency shall notify the COR of the update to his or her email address.

(2) If a participating employer provides an email address to the agency and the COR does not already have a valid email address on file, the agency shall use the email address provided by the employer until either:

(a) The email address is identified by the agency as invalid; or

(b) The COR changes the email address in accordance with subsection (1) of this section.

(3) The agency shall perform tests and audits to assist in determining if an email address is valid.

(4) A COR shall routinely be requested to confirm his or her email address on the Self-Service Web site.

(5) If the agency determines an email address is invalid for a COR receiving paperless communication, he or she shall stop receiving paperless communication. The agency shall send the COR notification of the change via U.S. mail, which shall include information on how to update his or her email address and how to change his or her communication preferences.

(6) The agency shall maintain an internal record of changes made to a COR's email address.

### Section 4. Paperless communication Notifications and Access.

(1) The agency shall provide paperless communication through the Self-Service Web site messaging center to all CORs with a valid email address on file who have not elected to opt-out in accordance with Section 5 of this administrative regulation.

(2)

(a) When a new message becomes available for a COR on the Self-Service Web site, he or she shall receive an electronic notification indicating that there is a message in the message center on the Self-Service Web site.

(b) If a COR has not set up a Self-Service Web site account, the COR's electronic notification shall include a hyperlink to view details of how to set up his or her Self-Service Web site account and access the message.

(c) A COR shall access the message by logging into the Self-Service Web site and viewing the message in the message center.

### Section 5. Opt-out of Paperless Communications.

(1) To opt-out of paperless communications, a COR shall:

(a) File a valid Form 2040, Change of Contact Information, indicating the election to opt-out;

(b) Update via phone by calling the agency, providing his or her agency issued PIN, and notifying the agency of his or her election to opt-out; or

(c) Update and save the opt-out preference in his or her Self-Service Web site account.

(2)

(a) A COR that does not update his or her communication preference in accordance with this subsection shall continue to receive paperless communication from the agency, apart from limited exceptions as specified in Section 10 of this administrative regulation.

(b) The COR shall stop receiving paperless communication as soon as the request is processed by the agency, apart from limited exceptions as specified in Section 9 of this administrative regulation.

(c) The agency shall provide the COR with notice of the change in communication preferences.

### Section 6. Changing to Paperless Communications.

(1) A COR who previously did not have a valid email address on file, shall complete one (1) of the following to change his or her communication preferences to paperless communications:

(a) File a valid Form 2040, Change of Contact Information, indicating the election to receive paperless communication and provided a valid email address;

(b) Update the email address via phone by calling the agency, providing his or her agency issued PIN and valid email address, and notifying the agency of his or her communication preferences;

(c) Update and save the preference to receive paperless communications in his or her Self-Service Web site account; or

(d) Provide the agency with a valid email address on any filed valid agency form that has the option to update the email address, except if the COR simultaneously elects to opt-out in accordance with Section 5 of this administrative regulation.

(2) A COR who previously elected to opt-out of paperless communications shall complete one (1) of the following to change his or her communication preferences to paperless communications:

(a) File a valid Form 2040, Change of Contact Information, indicating the election to receive paperless communication;

(b) Update via phone by calling the agency, providing his or her agency issued PIN, confirming the email address, and notifying the agency of his or her communication preference; or

(c) Update and save the preference to receive paperless communications in his or her Self-Service Web site account.

(3)

(a) A COR that does not update his or her communication preference in accordance with this subsection shall not receive paperless communication from the agency, apart from limited exceptions as specified in Section 9 of this administrative regulation.

(b) The agency shall provide the COR with notice of the change in communication preferences.

### Section 7. New CORs.

(1) Beginning May 1, 2024, a default to paperless communications for a new COR shall occur when:

(a) A member with a valid email address on file begins participating in the systems; or

(b) An agency account is created for a new beneficiary, new alternate payee, or other new recipient.

(2) The agency shall provide the persons indicated in subsection (1) of this section notification of the default to paperless communication, how to access the Self-Service Web site, and how to update paperless communication preferences.

(3) If the person indicated in subsection (1) of this section does not opt-out in accordance with Section 5 of this administrative regulation, he or she shall receive paperless communication from the agency, apart from limited exceptions as specified in Section 10 of this administrative regulation.



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(4) Beginning May 1, 2024, when a member begins participating in the systems, or an agency account is created for a new beneficiary, new alternative payee, or other new recipient, and there is no valid email address on file, the agency shall provide the person with information on how to update his or her email address and communication preferences, and how to access the Self-Service Web site. The person shall not receive paperless communication from the agency until the person changes his or her communication preferences in accordance with Section 6 of this administrative regulation and provides a valid email address.

Section 8. Termination of Employment with a Participating Employer.

(1) Except as provided in subsection (2) of this section, when the agency becomes aware that a member has terminated employment with a participating employer, the agency shall provide the member with notification indicating:

- (a) The status of the member's current communication preference;
- (b) If applicable, the valid email address currently on file for the member; and
- (c) Information on how to update his or her email address and paperless communication preferences.

(2) If the member has requested an accumulated account balance refund in accordance with KRS 61.625(1) and 78.545, the agency shall not provide the member with the notification required in subsection (1) of this section.

Section 9. Exceptions to Paperless Communication Opt-out. A COR who is not receiving paperless communication, but has a valid email address on file, shall at times receive general member information that is not specific to the COR through his or her email address.

Section 10. Exceptions to Paperless Communication. A COR who is receiving paperless communication shall, at times, receive communication via other methods when required by:

- (1) Local, state, or federal law, including tax laws;
- (2) Third-party vendors;
- (3) Medicare or other hospital and medical insurance; or
- (4) At the discretion of the agency.

Section 11. Updating a Physical Mailing Address.

(1) For a COR to update his or her physical mailing address, the COR shall do one (1) of the following:

- (a) Update and save the physical mailing address on the Self-Service Web site;
- (b) Update the physical mailing address via phone by calling the agency and providing his or her agency issued PIN and the updated physical mailing address; or
- (c) Provide the physical mailing address on any filed agency form that has the option to update the physical mailing address.

(2) The most recent update to the COR's physical mailing address that complies with this subsection (1) of this section shall be the physical mailing address used for non-paperless communication.

Section 12. Guardianship or Power of Attorney Communication.

(1) If a COR has a valid Guardianship Order, Conservatorship Order, or a Power of Attorney on file:

- (a) All changes to the COR's agency account shall be made by filing the appropriate valid form or document; and
- (b) No changes to the COR's agency account shall be made through the Self-Service Web site or by phone.

(2) Nothing in this section shall prevent the agency from providing paperless communications in compliance with Section 4 of this administrative regulation for a COR with a valid Guardianship Order, Conservatorship Order, or Power of Attorney on file.

Section 13. Incorporation by Reference.

(1) Form 2040, "Change of Contact Information," updated December 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the agency's Web site at kyret.ky.gov.

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**GENERAL GOVERNMENT CABINET  
Department of Military Affairs  
(As Amended at ARRS, March 11, 2024)**

**106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.**

RELATES TO: KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, 39E.990  
STATUTORY AUTHORITY: KRS 39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1), 39 E.210, 39E.990, and the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001[11000] to 11050[39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1), 39 E.210, 39E.990]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.010(1), ~~KRS 39E.040(6)~~, and ~~KRS 39E.080(4)~~ requires the Kentucky Emergency Response Commission and the Division of Emergency Management to promulgate[issue] administrative regulations to implement KRS Chapter 39E and [the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001[11000] to 11050[.] governing the reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.990 provides penalties for any person violating any provision of KRS Chapter 39E, and any administrative regulation promulgated, or order issued, pursuant to KRS Chapter 39E. This administrative regulation provides the procedure to assess, protest, and appeal penalties provided for in KRS 39E.990.[39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1), and 39E.210 require the Kentucky Emergency Response Commission and the Division of Emergency Management to promulgate administrative regulations governing the activities of the Kentucky Emergency Response Commission, including standards and procedures for the operations of the commission and local emergency planning committees, fee system, hazardous substance inventory and substance release reporting, emergency procedures and requirements, and establishment of warning and notification standards. This administrative regulation establishes procedures to be followed to assess civil penalties by the Kentucky Emergency Response Commission as provided for in KRS 39E.990.]

Section 1. Definitions.

(1) "Compliance Review Board" means any current five (5) members of the Kentucky Emergency Response Commission, selected by the commission chairman, to review and issue findings and[.] recommendations[, and penalties] regarding violations of KRS 39E.050, 39E.120, 39E.130, 39E.190, 39E.220, or any administrative regulation promulgated or order issued pursuant to KRS Chapter 39E, and issue penalties in accordance with 39E.990[, and any administrative regulation promulgated, or order issued pursuant to KRS Chapter 39E].

(2) "Notice of Non-Compliance" means the notice sent to a facility owner or operator to inform them of a violation, or violations, of KRS 39E or KAR Title 106 and the penalties due and owed pursuant to[per] KRS 39E.990.

Section 2. Notice of Non-Compliance.

(1) The commission chairman, or designee, shall mail a notice of non-compliance when the commission has notice of the existence

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of a violation of any provision of KRS 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.220, ~~for 39E.990,~~ for any administrative regulation promulgated ~~and~~ or order issued pursuant to KRS Chapter 39E.

(2) The notice of non-compliance shall contain the specific date, time, and place of the violation, if applicable, and a summary of the factual, legal, or other grounds upon which the notice is based, including the applicable provision of KRS Chapter 39E or KAR Title 106.

(3) Upon receiving a notice of non-compliance, the facility owner or operator shall ~~either~~:

(a) Agree to the violation cited in the notice of non-compliance and become compliant by remedying the violation, submitting payment for past due fees, and submitting payment of penalties ~~and~~ within thirty (30) days of the date of the notice of non-compliance; or

(b) Disagree with the violation and penalty cited in the notice of non-compliance. If the facility owner or operator disagrees with the notice of non-compliance, they may file a protest **in accordance with** ~~per~~ Section 3 of this administrative regulation.

(4) The commission may grant an extension of time for actions in subsection (3)(a) of this section, to **extend** ~~extended~~ beyond thirty (30) days, with the approval of the commission chairman ~~and~~ or designee.

**Section 3. Protesting a Notice of Non-Compliance.**

(1) If a facility owner or operator protests the notice of non-compliance, the protest shall:

(a) Be received by the commission within thirty (30) days from the date of the notice of non-compliance;

(b) Be in writing; and

(c) Contain a supporting statement setting forth the grounds upon which the protest is made.

(2) Upon written request, the commission may grant an extension for filing the supporting statement if it determines the delay is necessary and unavoidable. The refusal of **an** ~~such~~ extension may be reviewed in the same manner as a protested notice of non-compliance.

~~(3)~~(2) If a protest meets the requirements of subsection (1) of this section, the facility owner or operator may waive or request a conference with the **compliance** ~~non-compliance~~ review board.

(a) If a conference is requested, the compliance review board shall give notice of the conference date, place, and time to all affected persons. This notice shall be provided to the facility owner or operator at least twenty (20) days before the date of the conference.

(b) The conference may be held in person, or virtually, and **in accordance with** ~~per~~ the Open Meeting Act requirements contained in KRS 61.800 to 61.850. The compliance review board shall give the facility owner or operator, and other affected persons, an opportunity to present a statement or evidence challenging the notice of non-compliance. The facility owner or operator may appear in person or by a designated representative.

(c) Further conferences may be held by mutual agreement.

**Section 4. Findings and Recommendations and Final Decision.**

(1) After considering the protest, including any matters presented at the final conference, the compliance review board shall issue findings and recommendations on any matter in controversy. These findings and recommendations shall be:

(a) In writing;

(b) Mailed to the facility owner or operator, and to all affected parties **pursuant to** ~~per~~ Section 6 of this administrative regulation, within fourteen (14) days of issuance; and

(c) Mailed or transmitted to the chairman, or his designee, within fourteen (14) days of issuance.

(2) The commission shall approve or disapprove the findings and recommendations of the compliance review board and issue a final decision at the first scheduled and available commission meeting in which there is a quorum.

(3) The final decision shall be signed by the commission chairman, or a designee, stating that it is a final decision of the commission, generally state the issue in controversy, the commission's position, and set forth the procedure for an appeal.

(4) The facility owner or operator shall have twenty (20) days after the final decision is signed, issued, and mailed **by/via** certified mail, to:

(a) Resolve the findings; or

(b) Appeal the commission's final decision **pursuant to** ~~per~~ Section 5 of this administrative regulation by filing a request for an administrative hearing.

**Section 5. Appeal of the Commission's Final Decision.**

(1) The facility owner or operator shall request an administrative hearing by mailing **a** ~~such~~ request to the commission chairman, or designee, within the time set forth in Section 4(4) ~~and~~ of this administrative regulation.

(2) Upon receipt of the request, the commission chairman, or designee, shall request an administrative hearing officer for an administrative hearing. The administrative hearing **shall** ~~will~~ be held according to the procedures in KRS 13B.050.

**Section 6. Service and Mailing of Documents.**

(1) Service of documents by the commission, commission chairman or designee, or the compliance review board, shall be mailed by certified mail to the facility owner or operator at the address shown on the annual inventory report or facility plan required by KRS Chapter 39E. If no facility plans or annual inventory report has been filed, then to the last known address.

(2) All documents filed with the commission, commission chairman or designee, or the compliance review board, by any party, shall be served by mail upon all other parties. ~~General Provisions.~~

(1) The commission shall commence an administrative action to impose a civil penalty under KRS 39E.990(3) against a person if the commission has notice of the existence of a violation of any provision of KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, or 39E.990.

(2)

(a) The commission chairman (or designee) shall mail to the alleged violator a writing styled "NOTICE OF VIOLATION", which shall contain the specific date, time, and place of the violation, if applicable, together with a summary of the factual, legal, and other grounds upon which the notice of violation is based, and the specific provisions of KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, or 39E.990 or Title 106 KAR that were allegedly violated.

(b) Recitation of statutory or regulatory standards shall not be a sufficient summary of the grounds for the commission's action.

(3) The commission chairman (or designee) may attempt to informally resolve the violation. Informal resolution shall be in accordance with Section 3 of this administrative regulation.

(4) If, after ninety (90) days from the issuance of the notice of violation the alleged violation is unresolved, the commission chairman (or designee) shall issue a notice of administrative hearing, following the requirements of KRS 13B.050.

~~Section 2. Informal Proceedings. After an administrative action commences, the commission may seek informal resolution of the dispute with a party. Resolution shall be as established in this section.~~

~~(1) The commission shall give notice not less than twenty (20) days prior to an informal proceeding to all affected persons of the commission's notice of violation.~~

~~(2) After giving notice, the commission shall give affected persons or parties an opportunity, at a mutually convenient time and place, to present to an authorized commission representative evidence in opposition to the commission action or determination, or to give a statement challenging the grounds upon which the commission has chosen to justify its action or determination.~~

~~(3) The authorized representative of the commission shall give the affected person's evidence and objections due consideration, and notify all affected persons in writing within fourteen (14) days of the receipt of the evidence or objections of the commission's decision.~~

~~Section 3. Parties. The parties to the proceeding shall be the commission chairman (or designee) and the alleged violator who~~

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shall be designated respondent. A person may be permitted to intervene in any action by filing a petition for intervention in accordance with KRS 13B.060.

### Section 4. Assignment to Hearing Officer; Duties and Authority.

(1) Within ten (10) days of the filing of the notice of violation, the commission shall designate a hearing officer for formal administrative action in any manner consistent with KRS 13B.030. If the commission elects to designate a hearing officer from the Division of Administrative Hearings in the Office of the Attorney General under KRS 13B.030, the commission shall make that request in writing to the division within ten (10) days of the filing of the notice of violation.

(2) Assignment of a hearing officer from the Division of Administrative Hearings of the Office of the Attorney General shall be made according to 400 KAR 1:001, 400 KAR 1:030, 400 KAR 1:040, 400 KAR 1:090, and 401 KAR 100:010.

(3) A request for or assignment of a hearing officer under KRS 13B.030(2) shall be a designation of a hearing officer under these administrative regulations and a delegation to the hearing officer under KRS 13B.030(1) of all powers conferred on and relating to the conduct of the administrative action. The hearing officer shall have the authority to take any procedural action authorized by KRS Chapter 13B, Title 106 KAR, 400 KAR 1:001, 400 KAR 1:030, 400 KAR 1:040, 400 KAR 1:090, or 401 KAR 100:010, including, for example, the authority to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas for witnesses and production of documents or things;
- (c) Regulate discovery;
- (d) Rule on procedural requests;
- (e) Hold prehearing conferences;
- (f) Regulate the course of, and maintain order in the administrative hearing;
- (g) Rule on evidentiary matters and admit in or exclude evidence from the record;
- (h) Examine witnesses;
- (i) Require the parties to submit legal memoranda, and proposed findings of fact and conclusions of law;
- (j) Make proposed findings of fact, conclusions of law, and recommended orders for the agency head; and
- (k) Take any action consistent with law to promote the orderly and prompt conduct of the administrative action.

### Section 5. Continuances.

(1) Any party may request a continuance of a scheduled hearing for a death, serious illness or injury, emergency, or other unforeseen event or circumstance beyond the ability of a person acting with reasonable care and diligence to control that reasonably prevents a party from attending the hearing.

(a) The request shall be in writing and include the reason for the request.

(b) The request shall be submitted to the commission chairman (or designee) at least ten (10) days prior to the hearing date.

(2) Any party objecting to a requested continuance may file a written objection to the commission chairman (or designee) at least five (5) days prior to the scheduled hearing.

(3) The hearing officer shall rule on all requests for a continuance.

(a) In the hearing officer's absence, the commission chairman (or designee) shall rule on the requests.

(b) The commission chairman (or designee) shall execute and transmit an order either granting or denying the continuance to all parties involved.

### Section 6. Conflict of Interest; Recusal.

(1) If at any time during an administrative action an assigned hearing officer's continued service would violate the standard set forth in KRS 13B.040(2)(a) or a canon of judicial ethics, that hearing officer shall recuse and enter a written order withdrawing from the administrative action.

(2) At any point during an administrative action a party may move the hearing officer to recuse from an administrative action. The

motion to recuse shall be in writing filed in the record and shall be supported by an affidavit setting forth specific facts that demonstrate one (1) or more of the grounds for recusal set forth in KRS 13B.040(2)(b).

(3) Within ten (10) days of recusal of a hearing officer, the commission shall request or assign another hearing officer by written order.

### Section 7. Ex Parte Contact Prohibited.

(1) Unless otherwise allowed by KRS 13B.100, there shall be no administrative action, or any person working under the hearing officer's supervision, and any person with a direct or indirect interest in the outcome to that administrative action concerning the merits of the administrative action assigned to the hearing officer.

(2) This administrative regulation shall not prohibit ex parte contact with staff on purely procedural matters not at issue in the case. This section shall not prohibit communications with staff regarding the status of a case.

(3) Upon receiving an ex parte contact prohibited by this section, the hearing officer shall take every action required under KRS 13B.100, shall cause the parties to be notified of the contact, and shall inform the other parties to the action of their right to move for a recusal.

(4) The hearing officer may impose appropriate sanctions on a person who knowingly makes a prohibited ex parte contact, including deeming the person to have defaulted; striking all or part of that person's pleadings, claims, or defenses; denying any pending motions by the party; issuing a show cause order requiring the person to show why the hearing officer should not sanction the person; or taking such other actions as are appropriate pursuant to KRS Chapter 13B.

Section 8. Motion for Summary Disposition. A hearing officer may grant a motion for a summary disposition and recommend the agency head rule in the moving party's favor if the hearing officer finds that there is no genuine dispute as to any issue of material fact and the moving party is entitled to a summary disposition as a matter of law.

### Section 9. Filing of Papers.

(1) All papers after the petition required to be served upon a party shall be filed with the commission either before service or not less than twenty (20) days in advance of a hearing.

(2) Pleadings and other papers shall be filed with the commission when they are received and endorsed by the commission. The commission shall endorse the date of receipt on every paper filed in an action immediately upon receipt.

(3) Papers may be filed with the commission by telefacsimile machine at the telefacsimile telephone number listed for the commission on the notice of violation.

(a) A party filing by telefacsimile machine shall include a certificate that the paper is being filed by fax and the original paper is being filed by mail and shall immediately after faxing a paper mail the original paper to the commission.

(b) The filing date of a paper sent by facsimile shall be the date the commission receive the original, unless the original is received with five (5) business days of the facsimile, in which case the filing date shall be the date the commission received the facsimile.

(4) Papers may be filed electronically to email tier2kyem@gmail.com. Papers filed electronically via email shall include a certificate that the paper copy is being filed by email and the original paper is being filed by mail immediately after electronic submittal.

(5) All papers filed in an administrative action shall be signed by the filing person.

(a) The signature of the filing person or his or her authorized representative constitutes a certificate that the signing person has read the paper and that to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is not interposed for any improper purpose.

(b) If a paper is signed in violation of this subsection, the hearing officer may strike the paper from the record, deem the party to have failed to file the paper, and take any action allowed as a

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consequence of the failure, strike all or part of any pleading, claim or defense asserted in the filing, or bar an attorney violating this subsection from future participation in that administrative action, and recommend that the agency head bar that attorney from appearing in future administrative actions before the commission.

~~Section 10. Venue. Administrative hearings shall be conducted at a site designated by the hearing officer. In determining venue, the hearing officer shall consider the requirements of law and the convenience of the parties, the witnesses, and the evidence.~~

### ~~Section 11. Default.~~

~~(1) If a party fails to timely comply with an order of a hearing officer or a requirement of these administrative regulations, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his or her right to an administrative hearing and why the hearing officer should not immediately recommend that the commission chairman (or designee) enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend the entry of a final order in conformity with the relief requested by the opposing party in the administrative action.~~

~~(2) If a party fails to appear at a formal administrative hearing, the hearing officer may deem that party to have waived his or her right to a formal administrative hearing and may immediately recommend the commission chairman (or designee) enter a final order in conformity with the relief requested in the appropriate pleadings, or may proceed without the defaulted party.~~

~~(3) Upon the failure of a party to timely comply with a hearing officer's order, the hearing officer may recommend the commission chairman (or designee) grant any relief to which the opposing party is entitled.~~

~~(4) A hearing officer may, before the time for filing exceptions has run, set aside a recommendation by default under this section for a death, serious illness or injury, emergency, or other unforeseen event or circumstance beyond the ability of a person acting with reasonable care and diligence to control that reasonably prevents a party from complying.~~

### ~~Section 12. Burden of Proof.~~

~~(1) The commission shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion to show the propriety of the commission's action.~~

~~(2) The party asserting an affirmative defense shall have the burden of going forward and the ultimate burden of persuasion to establish that defense.~~

~~(3) The ultimate burden of persuasion in all administrative actions shall be met by a preponderance of substantial evidence in the record.~~

~~Section 13. Findings of Fact, Conclusions of Law, and Recommended Order. The hearing officer shall make findings of fact, conclusions of law, and issue a recommended order for review and approval by the full commission with service on all parties.~~

~~(1) Any party may take exception in writing within fifteen (15) days of mailing of the hearing officer's recommended order. Thereafter, the commission chairman (or designee), shall, as directed by the commission, approve the findings of fact, conclusions of law, and recommended order or may modify the findings of fact, conclusions of law and recommended order.~~

~~(2) If no exceptions are filed and the commission takes no action on the hearing officer's findings of fact and conclusions of law, within thirty (30) days, the order of the hearing officer shall be final.~~

### ~~Section 14.~~

~~(1) Service of the notice of violation, notice of administrative hearing, and the hearing officer's recommended order shall be made by certified mail to the alleged violator at the address shown on the annual inventory report or facility plan required to be filed by KRS Chapter 39E. If no facility plan or annual inventory report has been filed, then to the last known address.~~

~~(2) All documents filed with the commission by any party shall be served by mail upon all other parties.]~~

FILED WITH LRC: March 11, 2024

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.

## BOARDS AND COMMISSIONS State Board of Accountancy (As Amended at ARRS, March 11, 2024)

### 201 KAR 1:200. Board of Accountancy Scholarship Funding.

RELATES TO: KRS 325.240

STATUTORY AUTHORITY: KRS 325.240(7)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(7)(b) authorizes the Kentucky State Board of Accountancy to expend funds from its account created by KRS 325.250 to support scholarship programs that assist students enrolled in a Kentucky-based college or university who also satisfy other criteria contained in an administrative regulation promulgated by the board. This administrative regulation identifies the scholarship program that shall/will be supported by the board and establishes the selection criteria that shall/will be used in connection with the scholarship funds awarded by the board.

#### Section 1. Definitions.

(1) "Board" is defined by KRS 325.220(2).

(2) "CPA" means certified public accountant.

(3) "Educational Foundation of the Kentucky Society of Certified Public Accountants" means the 501(c)(3) organization established in 1961 by Kentucky Society of Certified Public Accountants to strengthen and advance the profession through enriched educational programs and scholarships.

(4) "Kentucky Society of Certified Public Accountants" means the statewide, non-profit professional organization, founded in 1924, serving certified public accountants in public accounting firms, businesses/business, industry, government, and education.

#### Section 2. Scholarship Funding.

(1) The board's support of scholarship programs shall include financial contributions made directly to the scholarship program operated by the Educational Foundation of the Kentucky Society of Certified Public Accountants, which recognizes scholastic achievement and leadership qualities in students who plan to become CPAs.

(2) Decisions regarding the amount and timing of the board's scholarship funding distributions to the program shall be made by/at the sole discretion of the board, and the/such expenditures shall in no way hinder or interfere with the performance of the board's regulatory purpose or statutory responsibilities.

#### Section 3. Administration of the Scholarship Program and Criteria for Awards.

(1) Program scholarships funded by the board shall be administered by the trustees of the Educational Foundation consistent with the existing administrative guidelines of its scholarship program.

(2) Apart from its monetary contributions, the board shall have no involvement in any administration of the scholarship program. Even with regard to scholarship awards funded by the board, members of the Educational Foundation of the Kentucky Society of Certified Public Accountants shall continue to administer the program under its existing guidelines.

(3) As the one (1) and only departure from the existing parameters and guidelines of the scholarship program established and administered by the Educational Foundation of the Kentucky Society of Certified Public Accountants, to be eligible to receive

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scholarship funds provided by the board, an applicant shall be enrolled in a Kentucky-based college or university.

(4) In all other respects, the existing parameters and guidelines of the scholarship program established and administered by the Educational Foundation of the Kentucky Society of Certified Public Accountants governing applicant eligibility; the application process; selection criteria; the selection process; and award amounts, distribution and **authorized[permitted]** use, shall be utilized in connection with scholarship awards funded by the board's financial contributions.

(5) Information on each of those specific elements of the Educational Foundation's scholarship program **may[can]** be found on the **Web site[website]** of **the** Kentucky Society of Certified Public Accountants,

**https://www.kycpa.org/edfoundation/scholarship[kycpa.org].**

FILED WITH LRC: March 11, 2024

CONTACT PERSON: Joseph P. Donohue, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, email joep.donohue@ky.gov.

**BOARDS AND COMMISSIONS**

**Board of Social Work**

(As Amended at ARRS, December 11, 2023 and March 11, 2024)

**201 KAR 23:170. Telehealth and social work practice.**

RELATES TO: KRS 335.158

STATUTORY AUTHORITY: KRS 335.158(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.158(1) requires social workers utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. **KRS 335.158(2) requires the board to promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to prevent abuse and fraud through the use of telehealth services, prevent fee-splitting through the use of telehealth services, and utilize telehealth in the provision of clinical social work services and in the provision of continuing education.** This administrative regulation protects the health and safety of individuals and establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth by social workers who utilize telehealth in the provision of social work services, and the provision of continuing education.

Section 1. Definitions.

(1) "Client" is defined by 201 KAR 23:080, Section 1.

(2) "Clinical social worker" means a licensed clinical social worker or a certified social worker under the supervision of a licensed clinical social worker.

(3) "Electronic social work service" means the use of Technology-Enabled Modalities and other electronic means to:

- (a) Provide information to the public;
  - (b) Deliver social work services to clients;
  - (c) Communicate with clients;
  - (d) Manage confidential information, personally identifiable information, protected health information, and financial and case records;
  - (e) Deliver services through videoconferencing, electronic mail, text, chat, facsimile, virtual, ~~or~~ augmented, ~~or~~ extended, ~~or~~ mixed reality, artificial intelligence, standard audio-only telephone, or digital and analog methods;
  - (f) Store and access information about clients;
  - (g) Provide synchronous telehealth or asynchronous telehealth;
- and
- (h) Arrange payment for professional services.

(4) "Telehealth" is defined **by[in]** KRS 335.158(3) and 211.332(5).

(5) "Telehealth service" means any service provided via electronic means that utilizes the social worker's skills, knowledge,

and training for a client;~~;~~

- (a) Event;
- (b) Encounter;
- (c) Consultation;
- (d) Visit;
- (e) Store-and-forward transfer;
- (f) Remote patient monitoring;
- (g) Referral; or
- (h) Treatment.

(6) **"Telehealth Terminology Glossary" in 900 KAR 12:005 is incorporated by reference.**

(7) "Teletherapy" means the practice of clinical social work as defined **by[in]** KRS 335.020 and 201 KAR 23:070.~~;~~ **and**

Section 2. Standards of Practice. **(1) Upon initial contact with a potential client and with the client thereafter,** all licensees using telehealth to deliver telehealth, teletherapy, or electronic social work services shall ~~;~~ **upon initial contact with a potential client and with the client thereafter:**

**(a)[(1)]** Make reasonable attempts to verify and document the identity of the **client[client(s)]**;

**(b)[(2)]** Make reasonable attempts to verify and document the physical location of the **client[client(s)]**;

**(c)[(3)]** Obtain alternative means of contacting the **client[client(s)]** other than ~~[including]~~ electronically;

**(d)[(4)]** Provide how communications can be directed to the social worker other than electronically;

**(e)[(5)]** Assess and document that the client's needs are appropriate for telehealth, teletherapy, or electronic social work services and that the client has the necessary knowledge and skill to benefit from telehealth, teletherapy, or electronic social work services provided by the social worker;

**(f)[(6)]** Use secure communications with clients, including encrypted text messages, email, non-public remote communication facing products, or secure internet sites;~~;~~

**(g)[(7)]** Not use personally identifying information or PHI in non-secure communications without expressed written and periodically reviewed informed consent to use non-secure communication;~~;~~

**(h)[(8)]** Obtain written informed consent for telehealth, teletherapy, or electronic social work services that ~~includes~~**include:**

- 1.[(a)]** The informed consent as required 201 KAR 23:080;
- 2.[(b)]** The client's right to request in-person visits; **and**
- 3.[(c)]** The limitations of using technology in the provision of services;

**(i)[(9)] Disclose the** potential risks to privacy and confidentiality of information due to the use of technology in the provision of services **including;**

- 1.[(a)]** The potential risks of disruption in the use of technology;
- 2.[(b)]** When and how the social worker utilizes electronic messages;

**3.[(c)]** The circumstances in which the social worker **may[will]** use alternative communications for emergency purposes, including medical, psychiatric, or other emergencies;

**4.[(d)] The identity of** anyone who may have access to client communications with the social worker;

**5.[(e)]** Identification of the social worker, their credentials, and the **jurisdiction[jurisdiction(s)]** of licensed practice;

**6.[(f)]** How or when recording of services **may be[is]** permitted by either the licensee or the client; **and;**

**7.[(g)]** How electronic signatures are obtained;~~;~~

**(j)[(10) The requirement of written informed consent shall not apply to an emergency if the client cannot provide informed consent, and the client's legally authorized representative is unavailable.**

**(11)** Provide how the social worker stores and disposes of recordings or electronic communications from the client; **and;**

**(k)[(12)]** Document in the client's record that a service was provided by electronic social work service within forty-eight (48) hours of the service, including any technical difficulties and adherence to all standards of care;~~;~~

**(2) The requirement of written informed consent shall not apply to an emergency if the client cannot provide informed**

**consent, and the client's legally authorized representative is unavailable.**

**(3) [(13)]** All licensees using telehealth, teletherapy, or electronic social work services to deliver social work services shall adhere to the same or appropriately adapted standards of care as in-person care.

**(4) [(14)]** All licensees shall be aware of the terminology and concepts defined in the Telehealth Terminology Glossary **including, such as, but not limited to,** asynchronous telehealth, clinical text **or [ / ]** chat, distant site, and originating site.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records.

(1) A social worker using telehealth, teletherapy, or electronic social work services to deliver social work services shall:

(a) Limit the practice of telehealth or teletherapy, or electronic social work services to the area of competence in which proficiency has been gained through education, training, and experience;

(b) Maintain current competency in the practice of telehealth, teletherapy, or electronic social work services through continuing education, consultation, or other methods, in conformance with standards of care and professional knowledge;

**(c) [(2)]** Document the client's presenting problem, service needs, care plan, treatment, diagnosis, or reasons for social work services;

**(d) [(a)]** Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the social worker disposes of electronic equipment and data;

**(e) [(b)]** Ensure the availability and integrity of digital records;

**(f) [(c)]** Have a set and disclosed retention period for secure storage of records, recordings, or electronic communications; and

**(g) [(d)]** Provide services only within their scope of practice.

**(2) [(3)]** Licensees providing clinical social work under supervision by an approved LCSW supervisor shall:

(a) Disclose all telehealth, teletherapy, or electronic social work services in the contract for supervision required under 201 KAR 23:070 or 201 KAR 23:160; and **[,]**

(b) Comply with the directives of the board.

**(3) [(4)]** A social worker licensed in another jurisdiction and using telehealth, teletherapy, or electronic social work services to deliver social work services to a client located in Kentucky at the time of service or is located in Kentucky at the time of service shall have a temporary permit to provide services or be licensed in Kentucky.

Section 4. Continued Education.

(1) All licensees shall attain or maintain their competence to deliver telehealth, teletherapy, or electronic social work services through appropriate supervision and continued education.

(2) All new licensees shall take a board approved two **(2) [ - ]** hour course once within their first license cycle on the regulations for delivering telehealth, teletherapy, or electronic social work services.

(3) All current licensees shall take a two **(2) [ - ]** hour course on the regulations for delivering telehealth, teletherapy, or electronic social work services approved by the board by June 30, 2024.

(4) Continued education presented as an electronic social work service shall comply with 201 KAR 23:075.

Section 5. Compliance with Federal, State, and Local Law. All licensees using telehealth to deliver social work services or teletherapy, or electronic social work services shall comply with **[the following]**:

(1) The federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9, any amendments or changes subsequently included, and other applicable federal and state laws; **[,]**

(2) The laws and regulations of the jurisdiction in which they are located, and in which the client is located at the time service is rendered, and under KRS 211.336(2)(i) when not in conflict with another state's laws; **and**

(3) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to allow telehealth, teletherapy, or electronic social work services accessible to a client with disabilities.

Section 6. Representation of Services and Code of Conduct. A licensee using telehealth to deliver social work services or teletherapy, or electronic social work services:

(1) Shall not, by or on behalf of the social worker, engage in false, misleading, or deceptive advertising of services via telehealth, teletherapy, or electronic social work services;

(2) Shall not employ fee-splitting with other telehealth persons or entities;

(3) Shall comply with 201 KAR 23:080, Code of ethical conduct; and

(4) Shall comply with all applicable administrative regulations.

Section 7. Incorporation by Reference.

(1) "Telehealth Terminology Glossary", August 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Telehealth Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at <https://telehealth.ky.gov>.

**Section 8. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on March 11, 2024.**

CONTACT PERSON: Marc Kelly, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, phone (502) 564-2350 or (502) 782-2856, or email [marc.kelly@ky.gov](mailto:marc.kelly@ky.gov).

**GENERAL GOVERNMENT  
Department of Agriculture  
Office of Marketing**

**(As Amended at ARRS, March 11, 2024)**

**302 KAR 45:020. Ginseng Growers Pilot Program.**

RELATES TO: KRS 246.030, 246.650, 246.660, **[246.990(9), 260.020, 260.030, 363.610, 50 C.F.R. Part 23**

STATUTORY AUTHORITY: KRS 246.660, 260.020**(3), 260.030(1)(d)**

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 260.020(3) authorizes the commissioner to promulgate administrative regulations for the Office of Agricultural Marketing.** KRS 246.660 requires the Department of Agriculture to administer a program for ginseng in Kentucky. This administrative regulation establishes a ginseng growing program.

Section 1. Registration. **Each person [All persons]** wishing to sell, trade, or otherwise offer for transfer, live ginseng plants or seeds in the Commonwealth of Kentucky shall first register with the **department [KDA].**

**(1)** A registrant shall submit a **driver's license or other government-issued identification and a completed Pilot [fully executed form -]** Ginseng Grower Registration **[.]**

**(2)** The **department [KDA]** shall issue a grower ID number to registrants once the form is reviewed.

**(3)** The **department [KDA]** may deny registration to persons with an infraction in the ginseng dealer program in the four (4) years prior to registration.

**(4)** A registration **shall be [is]** valid for the remainder of the calendar year **in which the registration [it]** was submitted **[ - in ]**.

Section 2. Site Inspection and Ginseng Placement. Prior to sale or transfer of live plants or seed, the registrant shall have a physical inspection of the growing location in Kentucky. The **department [KDA]** may inspect the site at any time after registration. Plants or seeds shall be located at least 300 feet **away** from known wild ginseng populations.

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Section 3. Records Required. A registrant shall maintain records, for at least ten (10) years, of ~~the following~~:

- (1) Seed source and number of seeds or seed weight amounts, and a written receipts or invoices for all materials; ~~;~~
- (2) Live plant source and planting numbers; ~~;~~
- (3) A map of planting locations; ~~and;~~
- (4) ~~Records of~~ All sales of all ginseng material, including live plants, seeds, and root material.

Section 4. Sales of Ginseng. All sales of live plants and seeds shall be from a registered grower.

- (1) All harvest and sales of roots shall be in accordance with 302 KAR 45:010.
- (2) Sales or purchases from any person not registered as a grower shall be ~~grounds for~~ ~~subject to~~ the penalties of 302 KAR 45:010, including underage plant possession.
- (3) All sales of roots shall be declared as other than wild for certification.

Section 5. Material Incorporated by Reference.

- (1) ~~The following material is incorporated by reference:~~ ~~Pilot~~ Ginseng Grower ~~Program~~ Registration, ~~December~~ ~~(November)~~ 2023, ~~is incorporated by reference.~~
- (2) ~~This material~~ ~~These materials~~ may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Regulation and Inspection Division, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
- (3) This material may also be obtained at [www.kyagr.com](http://www.kyagr.com).

FILED WITH LRC: March 11, 2024

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).

**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Waste Management  
(As Amended at ARRS, March 11, 2024)**

**401 KAR 45:010. Definitions for 401 KAR Chapter 45.**

RELATES TO: KRS 224.1-010, 224.50-760, 224.50-765

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations ~~that are consistent~~ ~~not inconsistent~~ with the provisions of law administered by the cabinet. KRS 224.40-305 requires persons who establish, construct, operate, maintain, ~~or allow~~ ~~or permit~~ the use of a waste site or facility to obtain a permit, pursuant to administrative regulations ~~promulgated~~ ~~adopted~~ by the cabinet. KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation establishes definitions for 401 KAR Chapter 45, concerning the management of special wastes and the training and certification of operators of special waste sites or facilities.

Section 1. Definitions.

- (1) "Beneficial reuse":
  - (a) Means the use or reuse of special wastes ~~, other than solids, residues, and precipitate separated from or created in sewage from humans, households, or commercial establishments by the processes of a wastewater treatment plant that are subject to the provisions of 401 KAR 45:100,~~ in a manner that complies with the environmental performance standards of 401 KAR 30:031 and all other applicable requirements of 401 KAR Chapter 45; ~~and;~~
  - (b) Does not mean the use or reuse of biosolids that are ~~governed by~~ ~~subject to~~ the provisions of 401 KAR 45:105.
- (2) "Biosolids" is defined by KRS 224.50-765(1).

(3) "Certified operator" means a special waste site or facility operator who holds a valid certificate upon the successful completion of a training course and examination, both approved as established in 401 KAR 45:090 ~~an approved training course and examination~~. The categories of certified operator ~~include~~ ~~shall be~~:

- (a) Composting operator; ~~;~~
  - (b) Interim operator; ~~;~~
  - (c) Landfarming operator; ~~;~~ and
  - (d) Landfill operator.
- (4) ~~(3)~~ "Closure" is defined by KRS 224.1-010(4).
- (5) ~~(4)~~ "Coal combustion by-products":
- (a) Means special waste including fly ash, bottom ash, or scrubber sludge residues produced by coal-fired electrical generating units; ~~;~~ and
  - (b) Does not mean residues of refuse derived fuels such as municipal waste, tires, or solvents.

(6) ~~(5)~~ "Composting" is defined by KRS 224.1-010(6). ~~Means the process by which biological decomposition of organic special waste is carried out under controlled aerobic conditions, and that stabilizes the organic fraction into a material that can easily and safely be stored, handled, and used in an environmentally acceptable manner. Composting:~~

- (a) ~~May include a process that creates an anaerobic zone within the composting material; and~~
- (b) ~~Does not include simple exposure of special waste under uncontrolled conditions resulting in natural decay.~~

(7) ~~(6)~~ "Composting operator" means a certified operator who is ~~the individual~~ responsible for ensuring compliance with all permit conditions at a composting facility and who is ~~reasonably~~ available to the facility during operations.

(8) ~~(7)~~ "Construction permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to commence site preparation prior to the disposal or management of special waste.

(9) ~~(8)~~ "Construction and Operation" ~~Construction/operation~~ permit means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to accept special waste for disposal or management. This permit is issued only after the construction of the site or facility has been certified as complete by the cabinet and the necessary financial assurance has been executed.

(10) ~~(9)~~ "Formal permit" means a permit for special waste landfills, landfarming operations, and composting operations issued by the cabinet after review of the designated application form and completion by the applicant of the requirements of 401 KAR Chapter 45 ~~this chapter~~.

(11) ~~(10)~~ "Horizontal expansion" means any increase in the capacity of a special waste landfill that expands the waste boundary of the landfill beyond the original waste boundaries contained in the ~~approved~~ permit application, approved as established in 401 KAR 45:040.

(12) ~~(11)~~ "Interim operator" means a person who assumes the position of a special waste site or facility operator in the absence of a designated certified operator pursuant to 401 KAR 45:090, Section 11.

(13) ~~(12)~~ ~~(a)~~ "Landfarming facility" means a special waste site or facility for land application of sludges or other special waste by ~~methods established in 401 KAR Chapter 45~~ ~~contained in this chapter~~; ~~any method~~ for purposes of disposal.

~~(b)~~ Disposal ~~it~~ ~~can be~~ on any piece or pieces of land ~~could~~, ~~subject to approval, and may~~ ~~can~~ improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and ~~does~~ ~~will~~ not disturb the soil below three (3) feet from the surface.

(14) ~~(13)~~ "Landfarming operator" means a certified operator who is ~~the individual~~ responsible for ensuring compliance with all permit conditions at a landfarming site or facility and who is ~~reasonably~~ available to be at the site or facility during operations.

(15) ~~(14)~~ "Landfill operator" means a certified operator who ~~has~~ ~~is the individual with~~ primary responsibility for management and

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operation of a special waste landfill to assure compliance with all permit conditions and is ~~reasonably~~ available to be at the site or facility during operations.

~~(16)~~~~(15)~~ "Postclosure" means the routine care, maintenance, and monitoring of a special waste site or facility following closure of the facility.

~~(17)~~ "Responsible corporate officer" means:

~~(a)~~ A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

~~(b)~~ The manager of one (1) or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million; or

~~(c)~~ A person who, pursuant to a corporation resolution, is designated to act on behalf and bind the corporation on all matters relating to permit applications and modifications.

~~(18)~~~~(16)~~ "Special waste" ~~means~~:

~~(a)~~ ~~As established in~~~~its defined~~ established ~~by~~ KRS 224.50-760(1)(a); and

~~(b)~~ ~~Does not include special wastes that are~~ Coal combustion residuals, ~~which are~~ governed by 401 KAR Chapter 46 and ~~not included for the purposes of 401 KAR Chapter 45 provisions.~~

~~(19)~~~~(17)~~ "Special waste site or facility" means any land, real property, appurtenance, building, structure, or installation where special waste is managed, processed, beneficially reused, or disposed.

[Section 2.] [Acronyms and Abbreviations. The acronyms and abbreviations used in this chapter are listed in Table 1.]

[Table 1. Acronyms and Abbreviations]	
[C.F.R.]	[Code of Federal Regulations]
[EPA]	[Environmental Protection Agency]
[FDIC]	[Federal Deposit Insurance Corporation]
[FSLIC]	[Federal Savings and Loan Insurance Corporation]
[KAR]	[Kentucky Administrative Regulations]
[KPDES]	[Kentucky Pollutant Discharge Elimination System]
[KRS]	[Kentucky Revised Statutes]
[NCUA]	[National Credit Union Administration]
[NPDES]	[National Pollutant Discharge Elimination System]
[PCB]	[Polychlorinated Biphenyls]
[POTW]	[Publicly Owned Treatment Works]
[U.S.C.]	[United States Code]
[USDA]	[United States Department of Agriculture]
[USGS]	[United States Geological Survey]

FILED WITH LRC: March 11, 2024

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**ENERGY AND ENVIRONMENT CABINET**  
**Department for Environmental Protection**  
**Division of Waste Management**  
**(As Amended at ARRS, March 11, 2024)**

**401 KAR 45:020. Types of special waste permits.**

RELATES TO: KRS 224.1[224.04], 224.10, 224.40, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(1)(d) ~~authorizes~~~~Chapter 224 requires~~ the cabinet to ~~promulgate~~~~adopt~~ administrative regulations for the management, ~~processing, and disposal of~~ special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow ~~permit~~ the use of a waste site or facility to obtain a permit. ~~[This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.]~~ This administrative regulation

~~establishes~~~~sets forth~~ the classification of special waste sites or facilities for permitting ~~purposes~~.

Section 1. Overview. This administrative regulation ~~establishes~~~~sets forth~~ the type of permit a person ~~shall~~~~is required to~~ obtain prior to engaging in the disposal or management of special waste. ~~[The transition period for complying with requirements of this chapter is contained in Section 4 of this administrative regulation.]~~

Section 2. Permit Types. This section establishes the ~~following~~ ~~types of special waste site or facility permits.~~

(1) Formal permit. A formal permitting process ~~shall be~~~~is~~ established that ~~shall include~~~~includes~~ the submittal of a complete application, review of the application, and permit issuance or denial by the cabinet. A formal permit shall be obtained by persons engaged in ~~the following activities~~:

(a) Special waste landfill, ~~which shall be~~ ~~This is~~ a category of waste site or facility designed and operated to accept for disposal a limited number of special wastes that are characterizable. The administrative and technical requirements for a special waste landfill ~~shall be as established~~~~are found~~ in 401 KAR 45:030 and ~~401 KAR~~ 45:110; ~~and~~;

(b) Landfarming and composting, ~~which shall be~~ ~~This is~~ a category of special waste site or facility that landfarms or composts special waste.

1. A special waste [landfarming or] composting site or facility that manages municipal wastewater treatment sludge ~~shall be~~~~is~~ classified as a Type A or Type B facility according to the metal concentrations of the sludge and volume of sludge accepted at the site as ~~established~~~~specified~~ in ~~Section 2 of~~ 401 KAR 45:100, ~~Section 2.~~ ~~[A Type B facility may be exempt from some of the requirements of a formal permit as specified in Section 2 of 401 KAR 45:100.]~~

2. Other special waste landfarming or composting ~~shall include~~~~is~~ the category of site or facility that manages special waste, other than municipal wastewater treatment sludge, which ~~shall be~~~~is~~ classified ~~as established~~~~using parameters set forth~~ in this administrative regulation and ~~additional parameters~~ based upon the source, chemical and physical characteristics of the waste, volume of waste, and its potential for adverse impact on human health or the environment. Other special waste landfarming or composting facilities shall be classified as either a Type A or Type B facility in accordance with ~~Section 2 of~~ 401 KAR 45:100, ~~Section 2.~~

3. Landfarming of biosolids, ~~is~~ the application to the land of sludges from the treatment of domestic sewage or sewage sludge from a treatment facility, ~~shall be~~~~and is~~ managed in accordance with 401 KAR 45:105.

(2) Permit-by-rule. This ~~shall be~~~~is~~ a category of waste site or facility permit for certain special waste management practices ~~established~~~~listed~~ in 401 KAR 45:060, ~~which shall be~~ ~~that are~~ deemed to have a permit without the owner or operator having made application or registration with the cabinet.

(3) Registered permit-by-rule. This ~~shall be~~~~is~~ a category of waste site or facility permit for certain special waste management practices ~~established~~~~listed~~ in 401 KAR 45:070, ~~which shall be~~ ~~that are~~ deemed to have a permit without further action by the cabinet upon acknowledgement by the cabinet of a complete registration by the owner or operator.

(4) Emergency permit. This ~~shall be~~~~is~~ a category of special waste site or facility permit for the short-term storage or disposal of special waste generated during certain emergency situations. ~~These permits shall be~~~~are~~ issued in accordance with 401 KAR 45:135.

(5) Research, development, and demonstration permit. This ~~shall be~~~~is~~ a category of special waste or facility permit to demonstrate unproven technology. ~~These permits shall be~~~~are~~ issued in accordance with 401 KAR 45:135.

Section 3. Special Waste Formal Permit Phases. The application process to obtain a formal permit shall consist of two (2) phases. ~~as follows:~~



(1) Upon approval of a permit application, the cabinet shall issue a construction permit that authorizes the owner or operator to commence construction of a site or facility in accordance with the terms and conditions of the construction permit. ~~and~~

(2) Upon completion of the construction phase, the owner or operator shall notify the cabinet that construction of the special waste site or facility is complete, in accordance with ~~Section 1(11) of~~ 401 KAR 45:140, Section 1(11), that construction of the site or facility is complete. The cabinet shall inspect the site or facility to ensure compliance with all construction permit requirements ~~and~~ and, upon execution of financial assurance and the submission of a fee ~~established in specified in Section 2(1)(d) of~~ 401 KAR 45:250, Section 2(1)(d), the cabinet shall issue a construction and operation ~~construction/operation~~ permit.

~~[Section 4.] [Transition from Solid Waste Site or Facility Permits to Special Waste Site or Facility Permits.]~~

~~[(1)] [Within six (6) months of June 24, 1992, any person that possesses a solid waste landfill or landfarming permit that disposes of special waste as defined in KRS 224.50-760 issued before the effective date of this administrative regulation shall file a notice with the cabinet that states the operator's intent to meet the requirements of this chapter by July 1, 1993.]~~

~~[(2)] [After July 1, 1993, no person shall operate a special waste landfill or special waste landfarming facility unless one (1) of the paragraphs of this subsection is satisfied and the owner or operator has complied with subsection (1) of this section:]~~

~~[(a)] [The facility owner or operator possesses a permit issued or continued under 401 KAR Chapters 47 and 48:]~~

~~[(b)] [The facility owner or operator possesses a permit issued or modified to meet the technical standards of this chapter:]~~

~~[(c)] [An application for a permit modification for closure or conversion to a different classification under this chapter has been filed with the cabinet within twelve (12) months of June 24, 1992, and the cabinet has not yet rendered a decision with respect to the complete application; or]~~

~~[(3)] [An owner or operator of a site or facility that was previously regulated as a solid waste registered permit-by-rule, but is now regulated as a special waste registered permit-by-rule under 401 KAR 45:070, shall be deemed to have a special waste registered permit-by-rule without having to resubmit a registration:]~~

~~[(4)] [An owner or operator of a site or facility that was previously regulated as a solid waste permit-by-rule, but is now regulated as a special waste registered permit-by-rule, shall register with the cabinet in accordance with 401 KAR 45:070 by December 31, 1992.]~~

~~[Section 5.] [Solid Waste Facility Applications Pending on the Effective Date of this Administrative Regulation. Applications pending on June 24, 1992, shall be revised to meet all requirements of this chapter prior to being determined technically complete.]~~

~~[Section 6.] [Closure Criteria for Sites or Facilities Not Applying for a Special Waste Permit. Any person disposing of special waste under a solid waste landfill or landfarming permit issued before June 24, 1992, who elects to cease operation at the facility by July 1, 1993, shall comply with the closure requirements of the solid waste permit and 401 KAR Chapters 47 and 48.]~~

FILED WITH LRC: March 11, 2024

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**ENERGY AND ENVIRONMENT CABINET**  
**Department for Environmental Protection**  
**Division of Waste Management**  
**(As Amended at ARRS, March 11, 2024)**

**401 KAR 45:025. Permit review and determination timetables.**

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50

STATUTORY AUTHORITY: KRS 224.10-220, 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(1)(d) authorizes ~~[Chapter 224 requires]~~ the cabinet to promulgate ~~[adopt]~~ administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow ~~[permit]~~ the use of a waste site or facility to obtain a permit. ~~[This chapter establishes standards applicable to all special waste sites or facilities.]~~ KRS 224.10-220 requires the cabinet to promulgate administrative regulations to establish timetables for the review and determination of permit applications. This administrative regulation establishes ~~[sets forth]~~ timetables for the review and determination of special waste permit applications and registrations but does not establish permitting timetables for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility pursuant to 401 KAR 45:105.

Section 1. Submittal of Permit Applications and Registrations.

(1) The official date of receipt for documents associated with a special permit application or registration shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant or registrant shall submit all information required in the applicable permit application ~~[have the burden of]~~ establishing that the application or registration is in compliance with all requirements of KRS Chapter 224 and 401 KAR Chapters 30 and 45].

Section 2. Administrative Completeness Determination.

(1)  
 (a) ~~A~~ A/No application or registration shall not be reviewed until the cabinet has determined that the application or registration is administratively complete. A determination by the cabinet that an application or registration is administratively complete means that the application or registration contains the major elements required by the applicable forms ~~[KRS Chapter 224 and 401 KAR Chapters 30 and 45 that are necessary to allow meaningful review by the cabinet]~~.

(b) An application or registration shall not be deemed administratively complete if one (1) or more major components are found to be absent from the application or registration, which, by virtue of their absence, would require that the permit be denied. A determination that an application or registration is administratively complete shall not mean ~~[that the application is complete in every detail, nor shall it mean]~~ that any aspect of the application is technically sufficient ~~[or approvable]~~.

(2) Within forty-five (45) calendar days of receipt of the application or registration, the cabinet shall provide written notice to the applicant or registrant as to the administrative completeness of the application or registration.

(a) ~~[If the application or registration is determined to be administratively complete, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.]~~

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[(b)] If the application or registration is determined to be incomplete, the cabinet shall notify the applicant or registrant of all the deficiencies that render it administratively incomplete. The applicant or registrant shall have thirty (30) calendar days from mailing or hand delivery of the cabinet's notice of deficiency to correct the deficiencies and render the application or registration administratively complete, unless the cabinet **and applicant approve/approves** a longer time period in writing [is approved by the cabinet].

(b)[(c)] The cabinet shall have thirty (30) calendar days from receipt of the applicant's or registrant's submittal of a complete response to a notice of deficiency to determine if the application or registration is administratively complete.

1. If the applicant or registrant **submits/renders** the application or registration administratively complete within the **established/specified** timetable, the cabinet shall notify the applicant or registrant in writing that the review and determination period **established/provided** by Section 3 of this administrative regulation has commenced.

2.

a. If the cabinet determines that the application or registration is not administratively complete at the end of the **established timetable/period specified in this subsection**, the cabinet shall make a written determination to deny the permit. The reason the application or registration [with the stated reason that the application or registration, in its current form,] fails to comply with the requirement to submit a complete application shall be **submitted/provided** to the applicant or registrant.

b. This action shall not preclude the submission of a new application or registration for the same site or facility in the future. Submission of a new application or registration shall be considered a new submittal [as if not previously submitted] for the purpose of fees and review timetables.

Section 3. Timetables for Permit or Registration Review and Determination.

(1) All administratively complete permit applications and registrations shall be reviewed and a determination made to issue, acknowledge, or deny the permit within the [following] timetables **established in paragraphs (a) through (h) of this subsection.[:]**

(a) Special Waste Formal Permit: 180 calendar days.

(b) Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit: ninety (90) calendar days.

(c) Registered Permit-by-rule: ninety (90) calendar days.

(d) Research, Development, and Demonstration Permit: 180 calendar days.

(e) Special Waste Permit modifications: 180 calendar days.

(f) Permit transfer: 180 calendar days.

(g) Permit renewal: ninety (90) calendar days.

(h) **Permit-by-rule/Permit by rule** applicability determinations: [Any other permit action not specifically set forth in this section:] ninety (90) calendar days.

(2) The timetables **established/specified** in subsection (1) [of this section] may be extended at the initiative of either the cabinet or the applicant or registrant. The purpose and period of the extension shall be in writing and, if agreed to by both parties, shall be signed by both the cabinet and the applicant or registrant. The agreement to extend the timetable shall become part of the cabinet's permit or registration file.

Section 4. Timetable Exclusions. The time periods **established/specified** in Section 3 of this administrative regulation shall not run [during the following intervals]:

(1) From the date the cabinet mails or hand delivers a notice of deficiency until the date the Division of Waste Management stamps as received a **completed/complete** response to the deficiencies. If a notice of deficiency is sent to an applicant or registrant, the applicant or registrant shall have 180 calendar days to respond to the notice of deficiency. Failure to respond to a notice of deficiency within 180 calendar days shall be grounds for denial of the permit;

(2) Sixty (60) days from the date of any public hearing on the application or registration to allow the cabinet time to consider public comments; and

(3) From the date a permit application or registration is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings.

Section 5. Timetable Extensions.

(1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant.

(2) If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate actions and final permit actions shall be accomplished.

(3) The established time frame for final action shall not exceed the last date for action that is provided for under applicable statutes and **401 KAR Chapter 45/administrative regulations**, based on all applications being considered and their filing dates.

[Section 6:] [Applicability Dates:]

[(1)] [The provisions of this administrative regulation shall apply to applications and registrations received after April 28, 1993.]

[(2)]

[(a)] [The provisions of this administrative regulation shall not apply to applications and registration pending on April 28, 1993 unless, within ninety (90) days of April 28, 1993, the applicant or registrant submits written notification to the cabinet that the applicant or registrant desires to have the application or registration subject to this administrative regulation.]

[(b)] [If the applicant or registrant fails to notify the cabinet in accordance with paragraph (a) of this subsection, the application or registration shall not be subject to the provisions of this administrative regulation.]

[(c)] [Applications and registrations for which the cabinet has mailed or hand delivered a notice of deficiency prior to the cabinet's receipt of the letter provided for in paragraph (a) of this subsection shall not be subject to the provisions of Section 2 of this administrative regulation. All other provisions of this administrative regulation shall apply beginning on the date the cabinet receives the notice provided for in paragraph (a) of this subsection.]

FILED WITH LRC: March 11, 2024

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**ENERGY AND ENVIRONMENT CABINET**  
Department for Environmental Protection  
Division of Waste Management  
(As Amended at ARRS, March 11, 2024)

**401 KAR 45:030. Obtaining a special waste site or facility permit.**

RELATES TO: KRS 146.200 - 146.990, 224.1[224.04], 224.10, 224.40, 224.50, 224.70, 224.99, **Chapter 350**, 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402

STATUTORY AUTHORITY: KRS [~~224.01-110,~~]224.10-100, 224.10-210, 224.40-305, 224.40-330, 224.50-760(1)(d), 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402

NECESSITY, FUNCTION, AND CONFORMITY: KRS **224.50-760(1)(d) authorizes**[Chapter 224 requires] the cabinet to promulgate[adopt] administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow[permit] the use of a waste site or facility to obtain a permit. **[This chapter establishes the permitting standards for special waste sites or facilities, and the operating standards applicable to all special waste sites or facilities.]** This administrative regulation establishes the procedures for obtaining a permit for a special waste site or facility. This administrative regulation does not

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establish permitting or permit application standards for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility because those requirements are contained in 401 KAR 45:105.

Section 1. The Objective and Requirements of the Application for a Special Waste Formal Permit.

(1) All applicants for a special waste formal permit shall submit an application, on the designated application form, that contains all of the information ~~required by [specified in this administrative regulation. The applicant shall submit the application on a form incorporated by reference]~~ approved ~~[by the cabinet and signed in accordance with Section 10 of]~~ this administrative regulation. Engineering drawings, specifications, and studies shall be certified by a professional engineer registered in Kentucky.

(2) The contents of the application shall be accurate and complete before the cabinet makes a preliminary determination as established in 401 KAR 45:050, Section 4, to issue a special waste formal permit.

Section 2. Scope of the Permit Requirements.

(1) Except as otherwise ~~established [provided]~~ in this section, any person managing special waste shall maintain a special waste site or facility permit as established in [specified in Section 2 of] 401 KAR 45:020, Section 2.

(2) Specific exclusions.

(a) The disposal of mining overburden, coal mining wastes, refuse, and coal mining by-products returned to the mine site of generation, including any nonhazardous waste generated directly as a result of the mining operation, shall not require a special waste site or facility permit. Owners or operators disposing of the materials in this subsection shall obtain and be regulated by the appropriate permit issued pursuant to KRS Chapter 350.

(b) Persons managing special waste during emergency situations shall be excluded, including [such as]:

1. A spill of a special waste;
2. An imminent and substantial threat of a spill of special waste;
- or
3. A spill of a material that, if [which, when] spilled, becomes a special waste.

(3) Specific inclusions.

~~[(a)] [Owners and operators of sites or facilities with permits under other programs for certain aspects of the facility operation shall also obtain the required special waste site or facility permit.]~~

~~[(b)] Any person who initiates or continues special waste containment or disposal activities after emergency actions are complete [situations are taken] shall comply with [be subject to] all applicable requirements of this chapter for those activities.~~

(4) ~~(a)~~ Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility.

(b) A permit-by-rule for any unit for which a permit has not been issued or denied shall not be affected by the issuance or denial of a permit to any other unit at the facility.

Section 3. Considerations of State and Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable state and federal laws. These laws include ~~[but are not limited to]:~~

(1) 16 USC 661 et seq. (the Fish and Wildlife Coordination Act of 1958, as amended);

(2) 16 USC 1273 et seq. (the National Wild and Scenic Rivers System);

(3) 16 USC 1531 et seq. (the Endangered Species Act of 1983, as amended) and 50 CFR Part 402;

(4) KRS 146.200 through [to] 146.360 and 400 KAR Chapter 4 ~~[401 KAR Chapters 4 and 5]~~ (the Wild Rivers system); and

(5) KRS 146.410 through [to] 146.990 and 400 Chapters 2 and 3 ~~[KAR Title 400] [(the Nature Preserves System)].~~

Section 4. Limitations of a Permit.

(1) A permit may be modified or revoked during its term for cause as established ~~[set forth]~~ in 401 KAR 45:040 and in 401 KAR Chapter 40.

(2) The issuance of a permit shall not convey any property rights or any exclusive privilege.

(3) The issuance of a permit shall not authorize any injury to persons or property or invasion of other private property rights, or any infringement of state or local laws or administrative regulations.

Section 5. Prohibition of Use of Unpermitted Facilities. ~~A [No]~~ person shall not deliver, or cause to be delivered, special waste to a site or facility unless the owner or operator has:

(1) ~~[Submitted a notice to the cabinet in accordance with Section 4(1) of 401 KAR 45:020 as an existing waste site or facility in operation on or before June 24, 1992;]~~

~~[(2)]~~ Qualified for a permit-by-rule in accordance with 401 KAR 45:060;

~~[(2)] [(3)]~~ Obtained ~~[Qualified]~~ for a registered permit-by-rule in accordance with 401 KAR 45:070 or 401 KAR 45:100, Section 8;

~~[(3)] [(4)]~~ Obtained a solid waste facility permit providing for the disposal of special waste in accordance with 401 KAR Chapters 47 and 48; or

~~[(4)] [(5)]~~ Obtained a special waste formal permit in accordance with 401 KAR Chapter 45 [this chapter].

Section 6. Permit Required.

(1) ~~A [No]~~ person shall not engage in the management, processing, or disposal of special waste at a waste site or facility without first obtaining a permit from the cabinet as established in 401 KAR Chapter 45 [specified in this chapter].

(2) ~~A [No]~~ person shall not engage in the management, processing, or disposal of special waste and solid waste without first obtaining a permit from the cabinet as established [specified] in 401 KAR Chapters 47 and 48.

(3) ~~A [No]~~ person shall not engage in the management, processing, or disposal of special waste and hazardous waste without first obtaining a permit from the cabinet as established [specified] in 401 KAR Chapter ~~[Chapters 31 to] 39~~.

(4) An owner or operator shall maintain a valid permit during the active life of the special waste site or facility, including the closure and postclosure periods required under 401 KAR 45:100 and ~~[401 KAR] 45:110~~.

Section 7. New Special Waste Sites or Facilities.

(1) ~~A [No]~~ person shall not begin physical construction of a new special waste site or facility without having received a special ~~[or solid]~~ waste permit.

(2) An applicant for a special waste formal permit shall submit to the cabinet an application that contains the information established [specified] in Section 8 of this administrative regulation.

(3) The site shall be designed in accordance with the applicable requirements of 401 KAR Chapter 45 [this chapter].

(4) If the cabinet determines during the review of the application that the proposed site cannot meet the requirements of this chapter, the cabinet shall deny the permit.

~~[(5)] [The cabinet shall make a preliminary determination to issue or deny an application for a special waste formal permit within 180 calendar days from initial receipt of the application.]~~

~~[(6)] [If the application is incomplete, the cabinet shall notify the applicant in writing of the deficiencies. Failure to submit any required information noted by the cabinet within ninety (90) calendar days of receipt of the deficiencies may be grounds for denial of the application. Periods of deficiency correction shall not be counted against the review time frame specified in subsection (5) of this section.]~~

Section 8. Application for a Special Waste Formal Permit.

(1) Any person who is required to have a special waste site or

facility permit under **401 KAR Chapter 45**~~[this chapter]~~ shall sign and submit a complete application to the cabinet.~~[The application forms are:]~~

(a) Persons applying for a special waste landfill permit shall use form ~~[DEP 7094A entitled -] [""]~~Application for a Special Waste Landfill Permit, ~~[""]~~ form DEP 7094A, ~~(November 2016). The requirements contained in the special waste landfill permit application are incorporated in this administrative regulation by reference.]~~ The cabinet may require that additional information be included in the application to ensure that a draft permit conforms with the requirements of **401 KAR Chapter 45**~~[this chapter]~~.~~[The permit application form may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste;]~~

(b) Persons applying for a special waste landfarming facility permit for the land application of special waste other than biosolids shall use ~~[form DEP 7021A entitled -] "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" form DEP 7021A and (November 2016), and form DEP 7021B entitled -] "Application for a Special Waste Landfarming Facility Permit" form DEP 7021B, (November 2016). The requirements contained in forms DEP 7021A and DEP 7021B are incorporated in this administrative regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste; and]~~

(c) Persons applying for a special waste composting facility permit shall use ~~[form DEP 7021A entitled -] [""]~~Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit, ~~[""]~~ form DEP 7021A and ~~(November 2016), and form DEP 7094D entitled -] [""]~~Application for a Special Waste Composting Facility Permit, ~~[""]~~ form DEP 7094D ~~(November 2016). The requirements contained in forms DEP 7021A and DEP 7094D are incorporated in this administrative regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste].~~

(2) Alternative application information may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer in accordance with 401 KAR 30:020, Section 2, that the alternative information results in information equal to or better than that in this administrative regulation to determine that the site and design comply with 401 KAR 30:031 and **401 KAR Chapter 45**~~[this chapter]~~.

(3) Persons applying for a special waste formal permit shall submit to the cabinet, as part of the application, ~~[form DEP 7094J entitled -] [""]~~Past Performance Information, ~~[""]~~ form DEP 7094J, ~~(November 2016). The requirements contained in form DEP 7094J are incorporated in this administrative regulation by reference.]~~The past performance information **shall be/is** collected in accordance with the requirements of KRS 224.40-330(1) and (3).~~[The information form may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.]~~

(4) The cabinet shall not begin the processing of a formal permit application until the applicant has fully complied with the application requirements for a permit pursuant to this administrative regulation, **401 KAR 45:025, and:**

**(a)** 401 KAR 45:100; or

**(b)** 401 KAR 45:110~~[,]~~ and ~~[401 KAR]~~ 45:160.

(5) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. If the application is for an existing waste site or facility, the cabinet shall **state/specify** in the notice of deficiency, a date for submitting the necessary information in accordance with the timetables established in **401 KAR 45:025**. The cabinet shall notify the applicant in writing **if/when** the application is deemed complete after receiving any required additional information. The notification of completeness shall also contain any public notice required under ~~[Section 4 of]~~ **401 KAR 45:050, Section 4**.

(6) If an applicant fails or refuses to correct deficiencies in the application or submit additional information, the permit shall be denied and, if applicable, enforcement actions **shall be** taken~~[under the appropriate statutory regulatory provisions]~~.

(7) If ~~[the cabinet determines that ]~~a site investigation or visit is necessary for any reason in conjunction with the processing of an application, the applicant or an authorized representative of the applicant shall accompany the cabinet representative on a site investigation or visit if requested by the cabinet.

(8) The cabinet may require ~~[such ]~~additional information **as-it deems ]**necessary in order to make a final determination to issue a permit or deny the permit application **as established/provided** in paragraph (1)(a) of this section.

#### Section 9. Formal Permit Issuance.

(1) The cabinet shall make a preliminary determination to issue or deny the permit application after review of the complete application. In making this preliminary determination, the cabinet shall consider the requirements **established in 401 KAR Chapter 45**~~[specified in this chapter]~~ and **224.50-760**~~[Chapter 224]~~.

(2)(a) If the cabinet makes a preliminary decision to deny the permit application, it shall issue a notice of intent to deny, ~~and~~~~[A notice of intent to deny the permit application]~~ **the permit applicant shall comply with/be subject to** the public information process as **established/specified** in 401 KAR 45:050.

(b) If the cabinet's final decision reverses the preliminary decision to deny the permit application, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (3) of this section.

(3) If the cabinet makes a preliminary determination to issue the permit, a draft construction permit shall be prepared containing ~~[the following information]:~~

(a) The proposed design and specifications; and

(b) Any conditions in accordance with ~~[Section 2 of]~~ 401 KAR 45:140, Section 2.

(4) The draft construction permit shall be based on the administrative record **established/outlined** in ~~[Section 3 of]~~ 401 KAR 45:050, Section 3.

(5) All draft construction permits prepared by the cabinet under this section, including those applications for horizontal expansions under ~~[Section 1 of]~~ 401 KAR 45:040, Section 1(2), shall **comply with/be subject to** the public information process as **established/specified** in 401 KAR 45:050.

(6) After the close of the public comment period, the cabinet shall issue a final permit decision, **based on the submitted application**, to issue or deny the construction permit.

(7) A final permit decision shall become effective on the date of issuance of the construction permit by the cabinet.

(8) The cabinet shall document the disposition of significant comments received, and, within thirty (30) days of a final permit decision, make this documentation available to the public by supplying it to the repository established in the county in which the facility is proposed.

(9) The cabinet shall issue a construction permit if it finds that the applicant for the permit has met all the requirements for application, ~~and~~ ~~[the requirements of]~~ **401 KAR Chapter 45**~~[this chapter]~~, and **224.50-760**~~[Chapter 224]~~.

(10) The applicant shall maintain a construction permit in full force and effect until the **construction and operation**~~[construction/operation]~~ permit is issued by the cabinet.

(11) A construction and operation~~construction/operation~~ permit shall be issued by the cabinet if/when~~if/when~~.

(a) The applicant has notified the cabinet, in writing, that the liner system, if required, has been constructed;~~and~~

(b) A representative of the cabinet has inspected the site and verified in writing to the applicant, within thirty (30) days of the inspection, that the site has been developed in accordance with plans approved by the cabinet;

(c) The required financial responsibility in 401 KAR 45:080 for closure has been established using any of the mechanisms required by 401 KAR 45:080 in an amount determined by an approved closure plan and cost estimate; and

(d) The applicant has submitted a certification by an engineer registered in Kentucky that the liner system, if required, and other features have been constructed in accordance with the approved plans and specifications.

(12) The cabinet may issue a permit that includes/subject to specific conditions which include~~but are not limited to~~.

(a) Types of wastes ~~which may be~~ accepted or disposed;~~;~~

(b) Special operating conditions;~~;~~

(c) Schedules for compliance for corrective action;~~;~~ and

(d) The issuance of other applicable permits of the cabinet.

#### Section 10. Signatures to Permit Applications and Reports.

(1) Applications. All permit applications and modifications shall be signed as established in paragraphs (a) through (d) of this section~~as follows~~:

(a) A responsible corporate officer shall sign permit applications and modification on behalf of a corporation. If the signature is by a person that meets the requirements of 401 KAR 45:010, Section 1(17)(c), then a copy of the corporation resolution shall be submitted to the cabinet attached to the permit application or modification.~~For a corporation, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:~~

[1.] ~~A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;~~

[2.] ~~The manager of one (1) or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million; or~~

[3.] ~~A person who, pursuant to a corporation resolution, is designated to act on behalf and bind the corporation on all matters relating to permit applications and modifications. A copy of the corporation resolution shall be submitted to the cabinet attached to the permit application or modification.~~

(b) A general partner or the proprietor shall sign for a partnership or sole proprietorship ~~by a general partner or the proprietor, respectively~~~~;~~

(c) A general partner shall sign for a limited partnership ~~by a general partner~~~~;~~ or

(d) A principal executive officer shall sign for a municipality or state, federal, or other public agency ~~by a principal executive officer~~. For purposes of this paragraph, ~~A principal executive officer shall include~~~~includes~~:

1. The ranking elected official;

2. The chief executive officer of the agency;

3. A senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

4. A person authorized, in writing, to sign on behalf of a person established/described in subparagraphs 1, 2, or/and 3 of this paragraph. The written authorization shall state/specify either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or a position of equivalent responsibility. A duly authorized representative shall/must thus be either a named individual or any individual occupying a named position.

(2) Reports.

(a) All reports required by permits, and other information requested by the cabinet, shall be signed by a person established/described in subsection (1) of this section, or by a duly authorized representative of that person.

(b) A person shall be a duly authorized representative only if:

1.~~(a)~~ The authorization is made in writing by a person established/described in subsection (1) of this section;

2.~~(b)~~ The authorization states/specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative shall/must thus be either a named individual or any individual occupying a named position; and

3.~~(c)~~ The written authorization is submitted to the cabinet prior to or together with any reports.

(3) Changes to authorization. If an authorization under subsection (2)~~(b)~~ of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, then a new authorization satisfying the requirements of subsection (2)~~(b)~~ of this section shall be submitted to the cabinet prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsection (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for such violations."

Section 11. Past Performance Considered in Review. Past performance of the owner, operator, and "key personnel", as defined by/in KRS 224.1-010(43)~~224.04-040(44)~~, of the special waste site or facility shall be considered in the review for issuance or denial of the permit application and in the determination of any requirement for specialized conditions in accordance with KRS 224.40-330(1) and (3).

#### Section 12. Term and Expiration of Permits.

(1)~~(a)~~ Permits-by-rule and registered permits-by-rule shall be perpetual unless modified or revoked by the cabinet.

(b) Permits-by-rule and registered permits-by-rule may be automatically revoked by the cabinet if the site or facility fails to meet the requirements of 401 KAR 30:031 or 401 KAR Chapter 45~~this chapter~~.

(2) Special waste site or facility construction permits shall be effective for a fixed term of~~not to exceed~~ five (5) years.

(3) Special waste landfill construction and operation~~construction/operating~~ permits shall be issued for the anticipated life of the facility.~~A shorter period may be specified by the cabinet.~~

(4) Special waste landfarming facility construction and operation~~construction/operation~~ permits shall be effective for a fixed term not to exceed ten (10) years. The cabinet shall review the conditions of the permit after five (5) years and modify the permit as necessary to maintain compliance with 401 KAR Chapter 45~~this chapter~~.

(5) For registered permits-by-rule or permit-by-rule~~permit by rule or permits by rule~~ permits issued under this administrative regulation for a term greater than five (5) years, the cabinet may reevaluate the terms and conditions of those permits~~the permit~~ any time prior to their~~the~~ expiration date~~of the permit~~. Issued permits shall~~may~~ be reevaluated in accordance with the requirements of 401 KAR Chapter 45~~this chapter~~ and KRS Chapter 224, including reevaluation of the bond. After reevaluation of the permit, the cabinet may require modifications of the permit pursuant to Section 1 of 401 KAR 45:040, Section 1.

(6) Modification of term of permit. Except as established/provided in Section 14 of this administrative regulation, the term of a permit shall not be extended by modification beyond the maximum duration established/specified in subsections (2) through~~to~~ (4) of this section.

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(7) Reduced term of permit. The cabinet may issue any permit for a duration that is less than the full allowable term under subsections (2) ~~through/fo~~ (4) of this section.

Section 13. Renewal of Formal Permits.

(1) Any application to renew a construction or construction and operation~~construction/operation~~ permit shall be submitted to the cabinet at least 180 days before the expiration date of the current permit. Persons applying for the renewal of a permit shall use ~~form DEP 7095 entitled ]["Application for Renewal of a Formal Permit, [" form DEP 7095 (November 2016). [The requirements contained in the renewal application are incorporated in this administrative regulation by reference. The cabinet may require that additional information be included in the application to ensure that a renewed permit conforms to the requirements of this chapter and KRS Chapter 224. The renewal application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at [eec.ky.gov/environmental-protection/waste](http://eec.ky.gov/environmental-protection/waste).]~~

(2) Applications to renew a construction or construction and operation~~construction/operation~~ permit shall be reviewed/subject to a review in accordance with the requirements of 401 KAR Chapter 45~~this chapter~~.

(3) The cabinet, in issuing a renewal, shall consider ~~if/whether~~ all conditions of prior permit conditions and agreed orders have been met. The cabinet may request updated information and impose additional or modified permit conditions to ensure compliance with 401 KAR Chapter 45~~this chapter~~~~when deemed appropriate~~.

Section 14. Continuation of Expiring Permits.

(1) The conditions of an expired permit shall continue in force to ensure the safe disposal of waste until the effective date of a new permit if:

(a) The permittee has submitted an~~a~~ timely application for renewal of a permit pursuant to~~under~~ Section 13 of this administrative regulation. These applications shall be complete and the applicant shall have paid the appropriate fees due under 401 KAR 45:250;

(b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit; and

(c) The cabinet has not given written notice of permit expiration due to enforcement actions or other reasons pursuant to the requirements of 401 KAR Chapter 45~~this chapter~~.

(2) Effect. Permits continued under this section shall remain in full force and effect until the renewal application has been issued.

Section 15. Termination of Permits. Special waste site or facility permits shall automatically terminate on the expiration date unless the cabinet has reissued the permit or issued a continuation in accordance with Section 14 of this administrative regulation.

Section 16. Confidentiality of Information.

(1) Claims of confidentiality. Any information submitted to the cabinet pursuant to this chapter may be claimed as confidential by the applicant. Any ~~such~~ claim of confidentiality shall be asserted at the time of submission in accordance with KRS 224.10-210 and 400 KAR 1:060. If ~~a~~ no claim is not made in accordance with 400 KAR 1:060, the cabinet may make the information available to the public without further notice.

(2) Denial of claims of confidentiality. Claims that the name and address of any permit applicant or permittee is confidential shall be denied.

Section 17. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application For a Special Waste Landfill Permit", form DEP 7094A, February 2023;

(b) "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit", form DEP 7021A, February 2023;

(c) "Application for a Special Waste Landfarming Facility Permit", form DEP 7021B, February 2023;

(d) "Application for a Special Waste Composting Facility Permit", form DEP 7094D, August 2023;

(e) "Past Performance Information", form DEP 7094J, November 2016; and

(f) "Application for Renewal of a Formal Permit", form DEP 7095, November 2016.

(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](http://eec.ky.gov/environmental-protection/waste).

FILED WITH LRC: March 11, 2024

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ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Waste Management  
(As Amended at ARRS, March 11, 2024)

401 KAR 45:040. Modification, transfer or revocation of special waste permits.

RELATES TO: KRS ~~224.1~~~~[224.04]~~, 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.40-330, 224.50-760 ~~(1)(d)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~224.50-760(1)(d) authorizes~~~~Chapter 224 requires~~ the cabinet to ~~promulgate~~~~adopt~~ administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow~~or permit~~ the use of a waste site or facility to obtain a permit. ~~This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.~~ ~~This administrative regulation establishes~~~~sets forth~~ the requirements for modification, transfer, and revocation of special waste permits but does not establish standards for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility that are regulated pursuant to 401 KAR 45:105.

Section 1. Modification of Permits.

(1) A special waste site or facility permit may be modified during its term, Modification shall be conducted in accordance with this administrative regulation.

(a) If a permit is modified, only the conditions that relate to the~~subject to~~ modification shall be reopened. A permit modification shall comply with public notification requirements unless~~be subject to public notice unless the cabinet determines~~ the modification does not present a threat to human health and the environment~~may be subject to public notice if the cabinet believes a significant degree of public interest exists with respect to an application~~.

(b) An application to modify a permit for a horizontal expansion beyond the permitted waste boundary shall require a public notice in accordance with 401 KAR 45:050.

(2)~~(4)~~ Modification of formal permits. Modifications requested by the permittee shall not be considered by the cabinet until the permittee has submitted a complete application to the cabinet that is appropriate for the type of facility being modified. The permittee shall use:

(a) ~~["]~~Application for a Special Waste Landfill Permit, ~~["]~~ form DEP7094A, incorporated by reference in 401 KAR 45:030;

(b) ~~["]~~Application for a Special Waste Landfarming Facility Permit, ~~["]~~ form DEP7021B, incorporated by reference in 401 KAR 45:030;

(c) ~~[""]Application for a Special Waste Composting Facility Permit,[""] form DEP 7094D, incorporated by reference in 401 KAR 45:030; or~~

(d) ~~[""]Application for a Research, Development, and Demonstration Permit,[""] form DEP 7094B, incorporated by reference in 401 KAR 45:135.~~

~~(3) [Forms in paragraphs (a) through (c) of subsection (2) are incorporated by reference in 401 KAR 45:030. The form in paragraph (d) of subsection (2) is incorporated by reference in 401 KAR 45:135.]~~ form DEP 7094A entitled "Application for a Special Waste Landfill Permit," form DEP 7021B entitled "Application for a Special Waste Landfarming Facility Permit" or form DEP 7094D entitled "Application for a Special Waste Composting Facility" which are incorporated by reference in Section 2 of 401 KAR 45:030, or has submitted form DEP 7094B entitled "Application for a Research, Development, and Demonstration Permit" that is incorporated by reference in Section 2 of 401 KAR 45:135. The permittee shall complete the applicable sections of the application as directed by the cabinet.]

~~[(4)](2)~~ Modification of a registered permit-by-rule. Registrants requesting a modification shall submit a new registration form in accordance with ~~[Section 4 of ]~~401 KAR 45:070, ~~Section 4.~~

~~(4) [(5)](3)~~ Causes for modification. ~~[The following paragraphs list ]~~are Causes for modification of formal permits by the cabinet ~~shall include:~~

(a) Material and substantial alterations or additions to the permitted special waste site or facility ~~[are ]~~being contemplated that justify new permit conditions that are different or absent in the existing permit;

(b) ~~A [The] cabinet determination [determines]~~ that the special waste site or facility, as previously permitted, is not likely to comply with 401 KAR 30:031;

(c) ~~[The cabinet determines ]~~Good cause exists for modification of a compliance schedule, such as an act of God, ~~labor~~ strike, ~~flood,~~ materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable available remedy;

(d) Modification of a closure plan ~~if required by 401 KAR Chapter 45 [is required under this chapter];~~

(e) The cabinet ~~receiving [receives]~~ notification of expected closure and ~~finding [finds]~~ that one (1) or more ~~[any]~~ of the permit conditions are no longer warranted;

(f) ~~Cabinet adjustment of [The cabinet adjusts]~~ the level of financial responsibility required pursuant to 401 KAR 45:080;

(g) ~~[The ]~~Corrective action program, ~~as included [specified]~~ in the permit, ~~failure to bring [has not brought]~~ the waste site or facility into compliance with the groundwater protection standards ~~as established in 401 KAR 45:160, Section 5 ]~~ within a reasonable period of time];

(h) ~~[To include ]~~A monitoring program meeting the requirements of 401 KAR 45:160;

(i) ~~Approval of [To approve]~~ a corrective action plan required by 401 KAR 45:160;

(j) ~~[To include ]~~Conditions applicable in new or amended statutes and administrative regulations;

(k) Modification ~~[is ]~~necessary to protect human health or the environment;

(l) ~~[To include ]~~Conditions applicable as a result of a hearing or enforcement action as ~~established [specified]~~ in 401 KAR Chapter 40;

(m) ~~Change of~~ ownership of the special waste site or facility ~~[changes];~~

(n) ~~Expansion of [To expand]~~ the capacity of a special waste site or facility; or

(o) ~~Addition of [To add]~~ a new waste that contains different chemical characteristics than the waste source previously permitted.

Section 2. Procedures for Permit Modification.

(1) A permit for a special waste site or facility may be modified either at the request of the permittee or upon the cabinet's initiative.

(2) If the permittee requests the modification, the cabinet shall ~~determine [decides]~~ ~~if [whether]~~ the request is justified in accordance with Section 1 of this administrative regulation ~~[or fer~~

other good cause shown]. If the cabinet determines not to modify the permit, ~~the cabinet [it]~~ shall notify the permittee in writing and give a reason for the decision.

(3) If the cabinet makes a preliminary decision to modify a permit under this administrative regulation, ~~then~~ the cabinet shall prepare a draft modified permit incorporating the proposed changes. If the permit modification ~~requires [is subject to]~~ public notice ~~[requirements]~~, the permittee shall publish a notice in accordance with ~~[Section 4 of ]~~401 KAR 45:050, ~~Section 4.~~

(4) The cabinet shall provide the permittee with a copy of the draft modified permit and allow ten (10) working days for comment. Comments received from the permittee shall be considered in finalizing the draft modified permit.

(5) The cabinet shall issue the modified permit after consideration of the comments or following the ten (10) day comment period if no comments are received.

(6) The owners or operators of a special waste site or facility may request a hearing, ~~A hearing shall be requested~~ pursuant to KRS 224.10-420 within thirty (30) days of issuance of the permit modification by the cabinet.

(7) All terms of an existing permit ~~shall~~ remain in effect during the permit modification request.

(8) A permit modification requesting a horizontal expansion shall ~~comply with [be subject to]~~ the requirements of public notice in accordance with 401 KAR 45:050. All draft permits for horizontal expansions shall be prepared ~~as established in [under Sections 8 and 9 of ]~~ 401 KAR 45:030, ~~Sections 8 and 9,~~ and shall be based on the administrative record required by ~~[Section 3 of ]~~401 KAR 45:050, ~~Section 3.~~

Section 3. Transfer of Permits.

(1) A permit ~~shall not be transferred [is not transferable]~~ to any person without prior approval of the cabinet ~~based on the submitted application. [For purposes of this section, ]~~ ~~A person requesting to transfer a formal permit for an existing special waste site or facility shall submit a completed Application to Transfer Special Waste Permit, form DEP 7094C. The [permit transfer] application shall be [is]~~ required if a person requests that the name on the permit be changed to a different person or entity or if the permittee is a corporation and fifty-one (51) percent or more of the stock is sold to a person who was not previously a stockholder, or was a stockholder owning less than five (5) percent of the stock.

(2) ~~[A person requesting to transfer a formal permit for an existing special waste site or facility shall submit ]~~ use form DEP 7094C entitled ~~[ "Application To Transfer Special Waste Permit" form DEP 7094C. ]~~ (November 2016). The requirements contained in the transfer application are incorporated in this administrative regulation by reference. The cabinet may require that additional information be included in the application to ensure that the prospective owner or operator complies with the requirements of this chapter. The transfer application form may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at [eec.ky.gov/environmental-protection/waste/](http://eec.ky.gov/environmental-protection/waste/)

~~[(3)]~~ ~~On the basis of the submitted application,~~ the cabinet shall make a preliminary determination to approve or disapprove a formal permit transfer within 180 calendar days from the initial receipt of the application.

~~[(3)] [(4)]~~ If the transfer application is incomplete, the cabinet shall notify the applicant in writing of ~~all~~ the deficiencies. Periods of deficiency shall not be counted against the review time frame ~~established [specified]~~ in subsection (3) of this section. Failure to submit ~~[any required ]~~ information noted by the cabinet ~~related to the deficiencies~~ within ninety (90) calendar days of receipt of the notice of deficiency ~~shall be [is]~~ grounds for disapproval of the transfer application.

~~[(4)] [(5)]~~ If the cabinet makes a preliminary determination to approve the transfer application, the applicant shall publish a public notice in accordance with ~~[Section 4 of ]~~401 KAR 45:050, ~~Section 4.~~

~~[(5)] [(6)]~~ After the public notice has been published by the applicant, the cabinet shall provide a public comment period in

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accordance with ~~[Sections 5 to 8 of]~~ 401 KAR 45:050, Sections 5 through 8.

~~(6)(7)~~ After the close of the public comment period, the cabinet shall make a final decision on the transfer application, based on the submitted application.

~~(7)(8)~~ A person requesting to transfer a registered permit-by-rule shall submit a registration in accordance with ~~[Section 2 of]~~ 401 KAR 45:070, Section 2.

Section 4. Modification, Suspension, and Revocation of a Permit.

~~(1)~~ The cabinet may modify, suspend, or revoke a permit issued under this chapter for: ~~[the items listed in subsections (1) through (7)].~~

~~(a)(1)~~ Violation of any requirement of KRS Chapter 224, 401 KAR Chapter 45~~[this chapter]~~, or 401 KAR 30:031; ~~[.]~~

~~(b)(2)~~ Aiding, abetting, or allowing~~[permitting]~~ the violation of KRS Chapter 224, 401 KAR Chapter 45~~[this chapter]~~, or 401 KAR 30:031; ~~[.]~~

~~(c)(3)~~ Any action or omission associated with maintenance and operation of the facility that could or does create a threat to public health or the environment; ~~[.]~~

~~(d)(4)~~ Violations of a condition or a variance of the special waste site or facility permit; ~~[.]~~

~~(e)(5)~~ Misrepresentation or omission of a significant fact by the owner or operator either in the application for the permit or in information subsequently reported to the cabinet; ~~[.]~~

~~(f)(6)~~ Failure to comply with an order issued by the cabinet; ~~[.]~~

~~(g)(7)~~ Transfer of the facility ~~[is transferred]~~ to another person without prior approval of the cabinet.

~~(2)(8)~~ The cabinet shall follow the applicable procedures in this administrative regulation and 401 KAR Chapter 40 in revoking any permit under this section.

~~(3)(9)~~ If a permit is revoked, the owner or operator may reapply.

~~(4)(10)~~ Owners or operators of special waste sites or facilities may file a request for a hearing. A request shall be pursuant to KRS 224.10-420 upon revocation of the permit.

Section 5. Incorporation by Reference.

(1) "Application To Transfer Special Waste Permit", form DEP 7094C ~~[November 2016]~~, 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](http://eec.ky.gov/environmental-protection/waste).

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**ENERGY AND ENVIRONMENT CABINET**  
**Department for Environmental Protection**  
**Division of Waste Management**  
**(As Amended at ARRS, March 11, 2024)**

**401 KAR 45:050. Public information procedures for special waste site or facility permits.**

RELATES TO: KRS 224.1~~[224.04]~~, 224.10, 224.40, 224.46, 224.50, 224.999~~[224.90]~~

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760~~(1)(d)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(1)(d) authorizes~~[Chapter 224 requires]~~ the cabinet to promulgate~~[adopt]~~ administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow~~[permit]~~ the use of a waste site or facility to obtain a permit.

~~[This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.]~~ This administrative regulation establishes~~[sets forth]~~ public information procedures. This administrative regulation does not establish the public information procedures for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility.

Section 1. Applicability.

(1) Public information procedures shall apply to applicants for the following permits~~[each person seeking]~~:

(a) A new special waste landfill permit;

(b) A permit for a horizontal expansion of a special waste landfill;

(c) A Type A special waste landfarming or composting site or facility permit;

(d) A research, development, and demonstration permit;

(e) A transfer of ownership of a site facility with a formal special waste permit that originally required a public notice; and

(f) Approval of a new waste permit that contains different chemical characteristics than the waste source previously permitted.

(2) The cabinet may require public information procedures for other permit actions or modifications if ~~[it determines that]~~ a significant degree of public interest exists with respect to an application or modification.

Section 2. Fact Sheet.

(1) A fact sheet shall be prepared by the cabinet for every draft permit. The fact sheet shall briefly state~~[set forth]~~ the principal facts and the significant factual, legal, methodological, and policy questions considered in processing the permit application. ~~[The cabinet shall send this fact sheet to the applicant and, on request, to any other person.]~~

(2) The fact sheet shall include:

(a) A brief description of the type of facility or activity that is the subject of the draft permit;

(b) The type and quantity of wastes that are proposed to be or are being stored, treated, or disposed;

(c) A brief summary of the basis for the proposed permit conditions, including reference to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by Section 3 of this administrative regulation;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 5 of this administrative regulation and the address where comments shall be received;

2. Procedures for requesting a hearing and the nature of that hearing; and

3. Any other procedures including public participation in the final decision; and

(f) Name and telephone number of a cabinet representative to contact for additional information.

Section 3. Administrative Record for Proposed Permits.

(1) The provisions of a draft permit prepared by the cabinet under ~~[Section 9]~~ of 401 KAR 45:030, Section 9, shall be based on the administrative record.

(2) The administrative record shall consist of:

(a) The application and any supporting data submitted furnished by the applicant;

(b) The draft permit or notice of intent to deny the application;

(c) The fact sheet prepared in accordance with Section 2 of this administrative regulation;

(d) All documents cited in the fact sheet; and

(e) Other documents contained in the supporting file for the proposed permit.

(3) Material readily available at the cabinet's office need not be physically included with the rest of the record if~~[as long as]~~ it is specifically referred to in the fact sheet, including~~[. This includes]~~



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published material that is generally available~~[,]~~ and that is included in the administrative record.

Section 4. Public Notice.

(1)

(a) Upon notification by the cabinet that the application is complete, the permit applicant shall publish a public notice, supplied by the cabinet, in a daily or weekly major local newspaper of general circulation where the proposed site or facility is located.

(b) Verification of publication shall be provided to the cabinet within thirty (30) calendar days of the publication date. The notice shall contain~~[the following information]:~~

1.~~[(a)]~~ Name and address of the cabinet's office processing the permit action for which notice is being given;

2.~~[(b)]~~ Name and address of the permit applicant and, if different, of the facility or site regulated by the permit;

3.~~[(c)]~~ A brief description of the business conducted or activity included/described in the permit application;

4.~~[(d)]~~ A description of the proposed location of the special waste site or facility, including a description of the primary access roads;

5.~~[(e)]~~ Name, address, and telephone number of a person from whom interested persons may obtain further information; and

6.~~[(f)]~~ The following statement: "Within thirty (30) days of the publication of this notice, any person who wishes to comment on the application may submit written comments and, if desired, request from the cabinet, a public meeting"~~[-and]~~

~~[(g)] [Any additional information required by the cabinet].~~

(2) The cabinet may schedule a public meeting if a significant degree of public interest exists as a result of a public notice published under this section.

(3) Upon notification by the cabinet that a draft permit has been prepared, the permit applicant shall publish a public notice, supplied by the cabinet, in a daily or weekly~~1~~ major~~1~~ local newspaper of general circulation where the proposed site or facility is located. Verification of publication shall be provided to the cabinet within thirty (30) days of the publication date. The notice shall contain~~[the following]:~~

(a) The information required by subsection (1)(b)1. through/te 6.~~[(1)(a) to (e)]~~ of this section;

(b) The location of a repository for documents in the county in which the site or facility is proposed, including copies of the proposed permit, fact sheet, and application;

(c) The time and place of any hearing already scheduled and procedures by which the public may participate in the public comment period and public hearing;

(d) The location of the administrative record required by Section 3 of this administrative regulation, including:

1. A local repository in the county in which the site or facility is proposed~~[-]~~;

2. The times at which the record is open for public inspection~~[-]~~ and

3. A statement that all data submitted by the applicant is available as part of the administrative record; and

(e) The following statement: "Any person who wishes to comment on the draft permit decision for this special waste site or facility may file comments with the cabinet and, if desired, request a public hearing within thirty (30) days of the publication of this notice pursuant to [Section 6 of ]401 KAR 45:050, Section 6."~~[-and]~~

~~[(f)] [Any additional information required by the cabinet].~~

(4) Public notices may describe more than one (1) permit or permit action.

(5) Public notices shall be of a size to include not less than two (2) columns widths for advertising and shall be in a display format.

(6) The cabinet shall distribute the public notice established/specified in subsection (1) of this section to~~[the following]:~~

(a) The Kentucky Department of Fish and Wildlife Resources~~[-]~~;

(b) The U.S. Fish and Wildlife Agency~~[-]~~;

(c) The Advisory Council on Historic Preservation~~[-]~~;

(d) The State Historic Preservation Officer~~[-and]~~

(e) Other appropriate government authorities, including those of any other affected states; and

~~[(f)](b)]~~ Any unit of local government having jurisdiction over the area where the facility is proposed to be located~~[- and~~ ~~(g)](c)]~~ [Each state agency, division, or department having any authority under state law with respect to the construction or operation of the proposed site or facility].

(7) The cabinet shall use any other public notice method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(8) In addition to the published public notices required in this section, an applicant shall deliver a notice that has been prepared by the cabinet to~~[the following individuals]:~~

(a) Landowners of all adjacent and abutting properties surrounding the proposed special waste site or facility; and

(b) Occupants of all buildings or units within a building on adjacent and abutting properties surrounding the proposed special waste site or facility.

Section 5. Public Comment Period. The public comment period shall allow at least thirty (30) days for public comment during which any interested person may submit written comments on the application or permit decision, and may request a public hearing if a hearing has not already been scheduled. The comment period shall commence on the date of publication of the public notice.

Section 6. Public Hearings.

(1) The cabinet may hold a public hearing on the basis of written request or if/when a significant degree of public interest exists concerning a special waste site or facility permit decision. The cabinet may hold a public hearing to clarify one (1) or more issues involved in the permit decision.

(2) If/Whenever a public hearing is held, a presiding officer shall be designated by the cabinet for the hearing who shall be responsible for its scheduling and orderly conduct.

(3) Any person may submit oral or written statements and data. Reasonable limits may be set upon the time allowed for oral statement, and the submission of statements in writing may be required.

(4) A written transcript of the hearing shall be made available to any person upon payment of the actual cost of reproducing the original.

Section 7. Reopening of the Public Comment Period.

(1) If any data, information, or arguments submitted during the public comment period, including information or arguments that any condition of the proposed permit or permit denial is inappropriate, appear to raise substantial new questions concerning a permit, the cabinet may:

(a) Prepare a new draft permit; or

(b) Reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. A public notice shall define the scope of the reopening.

(3) The cabinet may also, in the circumstances established/described in subsection (1) of this section, elect to hold further proceedings. This decision may be combined with any of the actions established/enumerated in subsection (1) of this section.

Section 8. Response to Comments.

(1) At the time that any final permit decision is issued, the cabinet shall issue a response to comments. This response shall:

(a) State/Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) Briefly describe and respond to all significant-comments on the draft permit raised during the public comment period, or during any public hearing.

(2) The response to comments shall be available to the public and shall be deposited in an appropriate facility in the county in which the site or facility is proposed.

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Section 9. Adjudicatory Hearing. An aggrieved person's right to an adjudicatory hearing pursuant to KRS 224.10-420 ~~shall commence[commences]~~ upon the completion of the public comment and hearing period as ~~established[provided]~~ in Sections 5 ~~through[, 6, and]~~ 7 of this administrative regulation and upon the cabinet's rendering of a final permit decision in accordance with ~~[Section 9 of ]~~401 KAR 45:030, Section 9.

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**ENERGY AND ENVIRONMENT CABINET**  
**Department for Environmental Protection**  
**Division of Waste Management**  
**(As Amended at ARRS, March 11, 2024)**

**401 KAR 45:080. Financial requirements and bonds for special waste facilities.**

RELATES TO: KRS ~~224.1[224.04]~~, 224.10, 224.40, 224.46, 224.50, 224.99, Chapter 355

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760 ~~(1)(d)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~224.50-760(1)(d) authorizes[Chapter 224 requires]~~ the cabinet to ~~promulgate[adopt]~~ administrative regulations for the managing, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or ~~allow[permit]~~ the use of a waste site or facility to obtain a permit. ~~[This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.]~~ This administrative regulation ~~establishes[sets forth]~~ the financial requirements for closure and postclosure of special waste sites or facilities ~~but does not establish~~ financial assurance requirements for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility. Information related to the permitting of biosolids is located in 401 KAR 45:105.

Section 1. Applicability. The financial assurance criteria and bond requirements ~~shall~~ apply to the owner or operator of special waste landfills; ~~[,] Type A landfarming and composting sites or facilities; [, and]~~ research, development, and demonstration sites or facilities; ~~[,] and~~ other sites or facilities if required by the cabinet ~~as part of a remedy or requirement included[set forth]~~ in a resolution of permit violations.

Section 2. Closure Cost Estimate. The owner or operator shall have a detailed, current written estimate, in dollars, of the cost of hiring a third party to close the special waste disposal site or facility in accordance with the closure plan developed to satisfy the closure requirements in ~~[Section 4 of ]~~401 KAR 45:100, Section 4, and ~~[Section 5 of ]~~401 KAR 45:110, Section 5.

(1) The estimate shall equal the cost of closing the special waste disposal site or facility at the point in the active life when the extent and manner of its operation would make closure the most expensive. The cabinet may adjust the figure for inflation and other factors. The owner or operator shall base the cost estimate on the following elements ~~that are applicable depending on the type of site or facility:~~

- (a) Design;
- (b) Site grading and drainage;
- (c) Hauling and placing of each element of the approved cap;
- (d) Final grading and drainage of the cap;
- (e) Revegetation of the cap; and
- (f) Quality control and construction certification.

(2) The owner or operator shall increase the closure cost estimate and the amount of financial assurance ~~established[provided]~~ under Section 5 of this administrative regulation if changes to the closure plan or special waste disposal

site or facility conditions increase the maximum cost of closure at any time during the active life.

(3) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance ~~established[provided]~~ under Section 5 of this administrative regulation if ~~the owner or operator[he]~~ can demonstrate that the cost estimate exceeds the maximum cost of closure at any time over the life of the special waste disposal site or facility.

(4) The owner or operator shall keep a copy of the latest closure cost estimate at the special waste disposal site or facility until the owner or operator has been notified by the cabinet that ~~the owner or operator[he]~~ has been released from closure financial assurance requirements under Section 5 of this administrative regulation.

Section 3. Postclosure Cost Estimate.

(1)

~~(a)~~ The owner or operator shall have a current, detailed written estimate, in dollars, of the cost of hiring a third party to conduct each phase of postclosure monitoring and maintenance of the special waste site or facility in accordance with the postclosure plan developed to satisfy the postclosure requirements of ~~[Section 4 of ]~~401 KAR 45:100, Section 4, and ~~[Section 5 of ]~~401 KAR 45:110, Section 5.

~~(b)~~ The postclosure cost estimate for each phase of postclosure used to demonstrate financial assurance in Section 6 of this administrative regulation shall be calculated by multiplying the annual cost estimate for each phase of postclosure by the number of years of postclosure care required.

(2) The cost estimate for each phase of postclosure shall be based on the most expensive costs of postclosure during that phase.

(3) The owner or operator shall increase the amount of the postclosure cost estimate and the amount of financial assurance ~~established[provided]~~ under Section 6 of this administrative regulation if changes in the postclosure plan or facility conditions increase the maximum costs of postclosure.

(4) The owner or operator may request a reduction in the postclosure cost estimate and the amount of financial assurance ~~established[provided]~~ under Section 6 of this administrative regulation if ~~the owner or operator[he]~~ can demonstrate to the satisfaction of the cabinet that the cost estimate exceeds the maximum costs of postclosure remaining over the postclosure period.

(5) The owner or operator shall keep a copy of the latest postclosure cost estimate at the site or facility until ~~he has been~~ notified by the cabinet that ~~the owner or operator[he]~~ has been released from postclosure financial assurance requirements for the entire facility under Section 6 of this administrative regulation.

Section 4. Financial Mechanisms. The owner or operator shall use one (1) of the financial mechanisms ~~established[specified]~~ in Section 7 or 10 of this administrative regulation, which satisfies the ~~[following]-~~criteria in subsections (1) through (3) of this section. The financial assurance mechanism shall:

~~(1) [The financial assurance mechanism shall.]~~ Ensure that the amount of funds ~~shall be[is]~~ sufficient to cover the costs of closure and postclosure care;

~~(2) [The financial assurance mechanisms shall.]~~ Ensure that funds shall be available in a timely fashion; and

~~(3) [The financial assurance mechanisms shall.]~~ Guarantee the availability of the required amount of coverage prior to the initial receipt of special waste.

Section 5. Closure Financial Assurance. The owner or operator of a special waste site or facility ~~governed by[subject to]~~ this administrative regulation shall establish, in accordance with Section 4 of this administrative regulation, financial assurance for closure of the facility, in an amount equal to the most recent closure cost estimate prepared in accordance with Section 2 of this administrative regulation. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements pursuant to ~~[Section 4 of ]~~401 KAR 45:100, Section 4, or ~~[Section 5 of ]~~401 KAR 45:110, Section 5.

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Section 6. Postclosure Financial Assurance. The owner or operator of a special waste site or facility governed by/subject to this[the] administrative regulation shall establish, in accordance with Section 4 of this administrative regulation, financial assurance for postclosure care of the facility, in an amount equal to the most recent postclosure cost estimate prepared in accordance with Section 3 of this administrative regulation. The owner or operator shall provide continuous coverage for postclosure until released from the financial assurance requirement pursuant to ~~[Section 4 of ]~~401 KAR 45:100, Section 4, or ~~[Section 5 of ]~~401 KAR 45:110, Section 5.

Section 7. Performance Agreement[~~Bond~~].

(1) Before the cabinet shall issue a construction and operation[~~construction/operation~~] permit, the owner or operator of a special waste site or facility that is required to post financial assurance pursuant to this administrative regulation shall complete a performance agreement form on [ ]Performance Agreement, [ ] DWM 4650, [~~bond on Form DEP 7094E entitled "Performance Bond" (November 2016). The requirements contained in the performance bond are incorporated in this administrative regulation by reference. The performance bond may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste;~~]

(2) To satisfy the financial requirement, the owner or operator shall submit a performance bond and one (1) of the following:

(a) A surety bond which is executed by filling in the required information on the performance bond form submitted in accordance with subsection (1) of this section and by submitting a copy of the surety bond agreement to the cabinet;

(b) A letter of credit submitted on form[~~as set forth on Form DEP 7094F entitled~~] [ ]Irrevocable Letter of Credit, [ ] DWM 4670, or[(November 2016). The requirements contained in the irrevocable letter of credit are incorporated in this administrative regulation by reference. The irrevocable letter of credit may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste;]

(c) An escrow agreement submitted on form[~~as set forth on Form DEP 7094G entitled~~] [ ]Escrow Agreement, [ ] DWM 4665, [(November 2016). The requirements contained in the escrow agreement are incorporated in this administrative regulation by reference. The escrow agreement may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste;]

~~[(3)]~~[Other financial assurance as specified in Section 10 of this administrative regulation.]

Section 8. Release of Financial Assurance.

(1) Financial assurance posted to assure proper closure of a special waste landfarming or composting facility shall be released in accordance with ~~[Section 4 of ]~~401 KAR 45:100, Section 4.

(2) Financial assurance posted to assure proper closure of a special waste landfill shall be released in accordance with ~~[Section 5 of ]~~401 KAR 45:110, Section 5.

Section 9. Financial Assurance for Publicly Owned Facilities. The owner or operator of a publicly owned facility shall provide a budget for the permitting, construction, operation, closure, and postclosure care of the facility. The budget shall be revised and submitted annually. ~~if~~When elements of the facility's permitting, construction, operation, closure, or postclosure care are to be accomplished by contract or agreement, a copy of the contract or agreement shall be submitted to the cabinet.

Section 10. Financial Assurance for Captive Facilities. The cabinet may accept other satisfactory financial assurance as adequate financial responsibility for a special waste site or facility ~~which is~~ exclusively owned and operated by a special waste

generator on property owned by the special waste generator for the purpose of accepting special waste exclusively from the special waste generator.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Performance Agreement", form DWM 4650, ~~[ ]~~February 2019[ ]];

(b) "Irrevocable Letter of Credit" form DWM 4670, ~~[ ]~~February 2019[ ]]; and

(c) "Escrow Agreement", form DWM 4665, ~~[ ]~~February 2019[ ]].

(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.

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ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Waste Management  
(As Amended at ARRS, March 11, 2024)

401 KAR 45:100. Landfarming and composting of special waste.

RELATES TO: KRS 224.1[~~224.04~~], 224.10, 224.40, 224.50, 7 U.S.C. 136 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-100, 224.40-305, 224.50-760(1)(d), 7 U.S.C. 136 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(a)(d) ~~authorizes~~Chapter 224 requires the cabinet to ~~promulgate/adopt~~ administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow ~~or permit~~ the use of a waste site or facility to obtain a permit. [This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.] This administrative regulation establishes~~sets forth~~ requirements for special waste landfarming sites or facilities and special waste composting sites or facilities but does not include landfarming of biosolids.

Section 1. Applicability.

(1) The requirements in this administrative regulation shall apply to any person disposing of or treating special waste by:

(a) Composting; or

(b) Landfarming of special wastes that are not biosolids. [~~landfarming or composting~~].

(2) Landfarming of biosolids shall be regulated in accordance with 401 KAR 45:105.

Section 2. Classifications of Special Waste Landfarming and Composting Sites or Facilities. A special waste landfarming or composting site or facility shall be/is classified as a Type A or Type B facility after the cabinet reviews the application filed pursuant to 401 KAR 45:030, Section 8(1)(b). [~~Notice of Intent filed pursuant to Section 3 of this administrative regulation.~~] The classification shall be/is based on the type and quantity of sludge or other special waste to be accepted at the landfarm or composting site or facility. ~~The following~~ Classifications shall be established in accordance with subsections (1) through (3) of this section. [~~are established:~~]

(1) A Type A landfarm or composting facility shall be/is a site or facility that accepts Type A [~~wastewater treatment~~]sludge or other special waste. Type A [~~wastewater treatment~~]sludge shall

~~include[is]~~ sludge ~~containing these limits[with the following parameters]:~~

Cadmium	Greater than 10 mg/kg[;]
Copper	Greater than 450 mg/kg[;]
Lead	Greater than 250 mg/kg[;]
Nickel	Greater than 50 mg/kg[;]
Zinc	Greater than 900 mg/kg[;]

(2)(a) A Type B landfarm or composting facility ~~shall be[is]~~ a site or facility that accepts Type B [wastewater treatment]sludge or other special waste. Type B [wastewater]sludge ~~shall include[is]~~ sludge ~~containing these limits[with the following parameters]:~~

Cadmium	Less than or equal to 10 mg/kg[;]
Copper	Less than or equal to 450 mg/kg[;]
Lead	Less than or equal to 250 mg/kg[;]
Nickel	Less than or equal to 50 mg/kg[;]
Zinc	Less than or equal to 900 mg/kg[;]

(b) The maximum amount of [wastewater treatment]sludge that may be processed by a Type B landfarm or composting site or facility ~~shall be[is]~~ 250,000 gallons or 250 tons (dewatered) per calendar year. If the owner or operator is processing Type B sludge and exceeds this volume limitation, then the site or facility shall be classified as a Type A landfarm or composting facility. ~~Unless otherwise required by the cabinet, an applicant for a Type B landfarming or composting permit shall be exempt from the requirements of publishing a public notice, the posting of financial assurance, the monitoring of groundwater, and postclosure care.]~~

(3) One (1) time only disposal. An applicant for one (1) time only disposal of special waste by landfarming or composting methods shall submit an application for a Type B landfarming or composting facility ~~unless otherwise directed by the cabinet].~~

(4) ~~An application to landfarm biosolids shall meet the requirements of 401 KAR 45:105. [Other special waste. An application to landfarm or compost special waste other than municipal wastewater treatment sludge shall be classified using the parameters set forth in subsections (1) and (2) of this section and additional parameters based upon the source, chemical and physical characteristics of the waste, the volume of waste, and the waste potential for adverse impact on human health or the environment. After review of the notice of intent filed pursuant to Section 3 of this administrative regulation, the cabinet shall classify the site or facility as either a Type A or Type B landfarming or composting facility. The applicant shall comply with all requirements in this chapter for the designated type of landfarming or composting facility.]~~

(5) A facility composting a Type A [wastewater]sludge may, at the discretion of the cabinet, be classified as a Type B facility depending upon the volume of special waste received, methods of composting, and siting considerations.

(6) A special waste landfarm or composting site or facilities classification under this section shall be reevaluated based upon the annual analyses submitted under Section 6(19) or 9(5) of this administrative regulation. The cabinet may reassign a landfarming or composting site or facility classification based on this submittal and require the owner or operator of the landfarm or composting site or facility to modify the permit accordingly.

(7)(a) Classification under this section shall be based on the average concentration of ~~[these] metals, listed in subsection (1) and (2) of this section,~~ in a minimum of two (2) consecutive samples taken no closer than thirty (30) days apart. Metal concentration values shall be determined on a dry weight basis. Analysis shall be accomplished by determining the ~~[heavy] metal~~ concentration of the undried sample (wet weight) and converting to dry weight using percent solids. The following formula shall be used: mg/L or mg/kg (wet weight) divided by (percent solids/100) = mg/kg dry weight.

(b) A single metal parameter shall be sufficient to require a sludge to be classified as Type A.

Section 3. Application Procedure for a Special Waste Landfarming or Composting Permit.

(1)(a) Notice of intent to apply. An applicant for a special waste landfarming or composting permit shall submit a notice of intent to apply as required under ~~[Section 8(1)(b) or (c) of]~~ 401 KAR 45:030,

~~Section 8(1)(b) or (c).~~ Upon review of the notice of intent to apply, the cabinet shall notify the applicant of the special waste classification determination and designate the landfarming or composting facility as either a Type A or Type B facility.

~~(b) [An applicant may be exempt from submitting a notice of intent prior to submitting the permit application required in subsection (2) of this section if the applicant is classifying itself as a Type A facility. However,]~~ The applicant ~~shall[is required to]~~ submit a notice of intent form with the permit application ~~established[specified]~~ in subsection (2) of this section.

(2)(a) Contents of landfarming or composting permit application. Upon determination of a special waste classification, A person shall submit the designated permit application for a special waste landfarming or a composting facility as ~~established in[specified in Section 8(1)(b) or (c) of]~~ 401 KAR 45:030, Section 8(1)(b) or (c), to the cabinet.

(b) A landfarming application may include parcels of land that are not located contiguously.

(3)(a) An applicant for a landfarming or composting facility ~~formal~~ permit shall comply with applicable requirements ~~[for a formal permit as specified] in 401 KAR 45:030 [when applying for a formal permit].~~

(b) An applicant for a Type A landfarming or composting facility shall also comply with the:

1. Public notice requirement in 401 KAR 45:050[; the]
2. Financial assurance requirements of 401 KAR 45:080[; the]
3. Surface and groundwater requirements of 401 KAR 45:160[; the]
4. Postclosure requirements of Section 4 of this administrative regulation.

(4)(a) A groundwater monitoring plan pursuant to 401 KAR 45:160 shall be required for Type A facilities.

(b) Upon examination ~~by the cabinet of the facility specific geologic setting[geological aspects] and any variance requests[other relevant factors] in the permit application [by the cabinet],~~ the cabinet may require the applicant for a Type B facility[may be required] to prepare a groundwater monitoring plan to include location and specifications of wells, monitoring parameters, and monitoring schedules in accordance with 401 KAR 45:160. [This plan shall be required for Type A landfarms or composting facilities.]

(5) ~~[The cabinet shall not allow landfarming or composting practices that may present a threat to human health or the environment.]~~ The cabinet shall base a decision to approve or deny a permit[as to the land] application for a special waste landfarming or composting facility based on the suitability of the facility, the[ a particular] special waste's[waste upon the] ability[ of the waste] to biodegrade in the environment, the potential for the special waste to be managed in a manner consistent with 401 KAR 30:031, the likelihood that special waste constituents will contaminate surface water or groundwater, the potential for nuisances from odors or unsightly conditions, and the potential for the special waste to harm human health or the environment.

Section 4. Closure and Postclosure of Landfarming and Composting Facilities.

(1) An owner or operator permanently ceasing to accept special waste at a Type A or Type B special waste landfarming or composting site or facility, shall submit to the cabinet a closure report that ~~shall include[includes]:~~

(a) The results of final soil samples taken in accordance with the ~~[construction/operation] permit~~ within eighteen (18) months following the last application of special waste;

(b)1. For landfarming sites or facilities ~~[shall submit]~~ a historical summary of all landfarming, by subplot, showing:

- a. The allowable and actual rates of special waste application[;]
- b. Heavy metals and nitrogen; and[;]
- c. Incorporating the annual landfarming review required by[as set forth in] Section 6(19) of this administrative regulation; or

2. For composting sites or facilities ~~[shall prepare]~~ a historical summary of composting activities at the site incorporating the annual composting review report required[as set forth] in Section 9(5) of this administrative regulation; ~~and[;]~~

(c) A certification from the owner or operator that the site or facility is closed and is in compliance with 401 KAR 30:031 ~~;~~ **and** [(d)] [Any additional information required by the cabinet in the original landfarming or composting permit.]

(2) The cabinet shall review the closure report and determine ~~if/whether~~ any additional monitoring or information shall be required to assure compliance of the site or facility with 401 KAR 30:031. If the site is not in conformance with 401 KAR 30:031 or the requirements of this chapter, the cabinet may take appropriate enforcement actions for violations of **401 KAR Chapter 45** ~~[this chapter]~~ or KRS Chapter 224.

(3)(a) A two (2) year postclosure monitoring maintenance period commencing on the first day after the facility permanently ceases accepting special waste ~~shall be/is~~ required for all Type A landfarming and composting facilities and for any other landfarming or composting facility required to conduct groundwater or surface water monitoring pursuant to ~~under~~ 401 KAR 45:160.

(b) During the postclosure monitoring and maintenance period, the owner or operator shall conduct groundwater and surface monitoring as required by:

1. 401 KAR 45:160 ~~;~~

2. The facility's approved groundwater and surface water monitoring plans ~~;~~ and

3. The terms of the facility's special waste permit.

(4)(a) At the conclusion of the two (2) year postclosure monitoring and maintenance period, the owner or operator shall submit a certification that postclosure is complete and that the site or facility is in compliance with 401 KAR 30:031 and the terms of this chapter.

(b) The cabinet shall review the postclosure certification and if ~~no~~ additional monitoring or information is not required and the site or facility is not subject to any enforcement actions for violations of this chapter or KRS Chapter 224, then the cabinet shall accept the owner's or operator's certification of postclosure.

(5) Upon acceptance of certification of postclosure, the cabinet shall release the financial assurance bond.

(6) The two (2) year postclosure monitoring and maintenance period may be extended if groundwater contamination as established/specified in Section 5 of 401 KAR 45:160, Section 5, is documented and the owner or operator is required to submit a groundwater assessment plan.

(7) Any necessary environmental remediation steps or corrective action for groundwater contamination required under 401 KAR 45:160 shall be performed before the special waste landfarm or composting site or facility postclosure is certified as complete and financial assurance is released.

Section 5. Siting Requirements for Landfarming. Special waste landfarming sites or facilities shall comply with subsections (1) through (5) of this section ~~the following siting requirements~~:

(1) Special waste shall not be applied in the 100-year floodplain unless the special waste is injected or incorporated ~~;~~

(2) Land application units shall have a minimum of four (4) feet of soil between the soil surface and both the seasonal high water table and bedrock ~~;~~

(3) Special waste shall not be applied on soils with a permeability rate greater than six (6) inches per hour or less than two-tenths (0.2) inches per hour ~~;~~ **and**

(4) Land application units shall not be located on land with a slope greater than fifteen (15) percent.

(5) All landfarming facilities shall comply with 401 KAR 30:031 and shall maintain the following buffer zones:

Required Buffer Zones Minimum Distance in <del>Feet</del> <b>Feet</b> From the Boundary of the Application Zone		
Structure or Object	Subsurface Injection or Incorporation	Surface Application
Residences & occupied Buildings	200	300
Water Well	200	300
Surface Water Body	200	300
Karst Feature	200	300
Perennial Stream	200	300
Intermittent Stream	30	50

Ephemeral Stream	30	50
Property Line	30	50
Public Road	30	50

Section 6. Operating Requirements for Special Waste Landfarming Facilities. Special waste landfarming sites or facilities shall comply with subsections (1) through (29) of this section ~~the following~~:

(1) Prior to applying sludges to the land, all sludges shall be processed to significantly reduce pathogens as established/specified in Section 11 of this administrative regulation.

(2) An operator certified in accordance with 401 KAR 45:090 shall be available at the landfarming site during special waste application. All sludge applications shall be accomplished under the direction of a certified landfarming operator.

(3) ~~if/when~~ surface application is used in conjunction with soil incorporation methods, incorporation shall occur within forty-eight (48) hours of sludge application.

(4) Surface application without incorporation into the soil shall not be used on land without established vegetative cover or crop residue of at least seventy-five (75) percent.

(5) ~~No~~ Hazardous wastes or mixtures of hazardous and solid waste shall not be disposed at, discharged to, or placed in a landfarming site.

(6) ~~No~~ Toxic wastes or mixtures of toxic and nontoxic wastes regulated under 7 U.S.C. 136 et seq. (the Toxic Substances Control Act) shall not be disposed at, discharged to, or placed in a landfarming site.

(7) The ~~following~~ agricultural use restrictions established in paragraphs (a) through (e) of this subsection shall apply ~~;~~

(a) Land spreading shall not occur on land where leafy vegetables or root crops for human consumption will be harvested within twelve (12) months ~~;~~

(b) Land spreading shall not occur on land where crops for direct human consumption will be harvested within two (2) months ~~;~~

(c) Dairy grazing shall be prohibited for six (6) months after land spreading. Other livestock grazing shall be prohibited for three (3) months ~~;~~

(d) ~~The~~ ~~the~~ annual application rate of cadmium shall meet the requirements in 401 KAR 30:031, Section 6 ~~exceeds 0.44 pound per acre, food chain crops shall not be utilized in the cropping season following land application~~ ~~;~~ **and**

(e) If the annual application rate of cadmium from sludge exceeds 0.44 pounds per acre at any time during the life of a site, special waste shall not be land spread where tobacco is to be harvested within five (5) years of special waste application ~~;~~ if the annual application rate of cadmium from the sludge exceeds 0.44 pound per acre at any time during the life of the site.

(8) The general public shall be restricted from the application zone for a period of twelve (12) months after each application, unless the special waste has undergone a process to further reduce pathogens in accordance with Section 12 of this administrative regulation.

(9) Special waste shall not be land spread on frozen, snow-covered, ice-covered, or water-saturated soil, or during any precipitation event.

(10) ~~No~~ special waste shall not be applied in excess of schedules and rates of special waste application established in subsection (23) of this section and Section 7 of this administrative regulation ~~approved by the cabinet~~.

(11) ~~No~~ Raw or unstabilized special waste shall not be landfarmed. The permittee shall maintain compliance with the ambient air quality standard for odor, as established/set forth in 401 KAR 53:010.

(12) The amount of any single surface application shall not be greater than an average one-half (1/2) inch in thickness.

(13) High pressure spray irrigation of sludge ~~that/which~~ produces aerosols shall be prohibited.

(14) Subplots shall be staked or otherwise clearly marked in the field.

(15) The owner or operator shall have a sign located at the entrance to the landfarming facility. The sign shall indicate the

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source and type of special waste and the type of operation, the name of operator, the permit number, the contact person, and the emergency telephone number.

(16) Surface water or special waste ponding within the application zone shall be prohibited.

(17) Surface run-off and run-on shall be controlled to minimize the possibility of applied special waste contaminating nearby surface water or adjacent land areas.

(18) Records of all landfarming activities shall be maintained throughout the operation of the site on the form, [entitled] Annual Landfarming Review, DEP 7048 [forms provided by the cabinet throughout the operation of the site]. The records shall at a minimum contain the schedules and rates of special waste application and all laboratory analyses. Records shall be made available to the cabinet upon request.

(19) Each landfarming owner or operator shall submit an annual report of landfarming activities to the cabinet by March 15<sup>th</sup> for the landfarming activities conducted the previous calendar year [sixty (60) days prior to the anniversary date of the permit issuance]. The report shall be submitted on form DEP 7048, [entitled "Annual Landfarming Review"] [(November 2016)]. [The requirements contained in the annual landfarming review are incorporated in this administrative regulation by reference. The review may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at [eec.ky.gov/environmental-protection/waste-](http://eec.ky.gov/environmental-protection/waste-)]

(20) Operational monitoring shall be performed as established in paragraphs (a) and (b) of this subsection [on the following schedule:]

(a) Soil shall be sampled annually in accordance with the soil monitoring plan in the approved permit [application; and]

(b) 1. Special waste from [municipal wastewater treatment] municipal water treatment facilities shall be sampled in accordance with the following table, or more frequently if required by the cabinet based on an increase in concentrations from routine sampling or a change in sources to the municipal water treatment facility.

2. Other special waste shall be sampled in accordance with a schedule approved by the cabinet based on an increase in concentrations from routine sampling or a change in sources to the municipal water treatment facility. Special waste shall be analyzed for solids content, pH, ammonium nitrogen (NH<sub>4</sub>-N), nitrate nitrogen (NO<sub>3</sub>-N), total Kjeldahl nitrogen, total phosphorus, total potassium, PCBs, chromium, copper, zinc, nickel, lead, and cadmium. Laboratory analysis results shall be reported in milligrams per kilogram wet and dry weight.

Required Sampling Schedule	
Design Treatment Capacity(gallons per day)	Samples Per Year
Less than 1,000,000	2
1,000,001 - 10,000,000	4
More than 10,000,000	12

(21) Soil pH shall be maintained at six and five-tenths (6.5) or greater during crop production, hay production, or grazing.

(22) Special waste containing concentrations of PCBs greater than one (1) milligram per kilogram shall not be landfarmed.

(23) (a) The maximum amount of metals from special waste that may be applied during the life of the site shall be based upon the cation exchange capacity (CEC) of the soil and shall be as follows:

Parameter	Maximum Amount of Metals Cation Exchange Capacity (meq/100g)		
	0-5	5-15	15+
Lead	500 lbs/ac.	1000 lbs/ac.	2000 lbs/ac.
Cadmium	4.46 lbs/ac.	8.92 lbs/ac.	17.84 lbs/ac.
Copper	125 lbs/ac.	250 lbs/ac.	500 lbs/ac.
Nickel	50 lbs/ac.	100 lbs/ac.	200 lbs/ac.
Zinc	250 lbs/ac.	500 lbs/ac.	1000 lbs/ac.

(b) The following equation shall be used to determine the maximum number of tons of special waste per acre that may be land spread without exceeding the above limitations:

$$\text{Tons waste / acre} = \frac{(\text{lbs per acre for each parameter Table 4})}{(\text{dry mg / kg of metal in waste sample}) \times 0.002}$$

(24) The amount of nitrogen land spread shall not exceed the nitrogen utilization rate of the vegetative cover in the application zone. (a)

(25) (a) If the laboratory analyses and calculations to determine quantities of metals applied to the soil indicate [discloses] that the cumulative concentration of a contaminant is above the maximum level allowed [permitted] under subsection (23) of this section, a written notice shall be given to the cabinet within ten (10) days of receipt of the monitoring results. The owner or operator shall cease further landfarming and submit to the cabinet within forty-five (45) days a report stating [describing] proposed corrective actions to be taken by the owner or operator.

(b) A notice shall be recorded on the property deed within forty-five (45) days of receipt of the monitoring results stating that the property has received special waste at concentrations exceeding permitted levels, and that food chain crops shall not be grown due to possible health hazards.

(26) In addition to the operating requirements in this section, the owner or operator who is landfarming Type A sludge shall sample surface water quarterly.

(a) Parameters to be monitored shall include:

1. pH; [;]
2. Ammonium nitrogen (NH<sub>4</sub>-N); [;]
3. Fecal coliform bacteria; [;]
4. Chromium; [;]
5. Biological oxygen demand; [;]
6. Total organic carbon; [;] and
7. Total dissolved solids.

(b) A minimum of one (1) upgradient and one (1) downgradient sampling point shall be required.

(27) Owners and operators of Type A landfarming or composting facilities and all Type B facilities that have documented contamination [other designated facilities] shall conduct groundwater monitoring in accordance with 401 KAR 45:160.

(28) If [heavy] metal applications exceed the amounts listed in subsection (23) of this section, the owner or operator shall immediately commence closure of the facility and [immediately] submit a closure report within forty-five (45) [45] days containing the information required by Section 4(1) of this administrative regulation. The report shall also include a copy of the notice in the deed advising all future landowners in perpetuity that [heavy] metal concentrations exceed those allowed by this administrative regulation.

(29) Landfarming sites and facilities shall comply with all requirements established [set forth] in 401 KAR 45:140.

Section 7. Application Rates for Landfarming Sites or Facilities.

(1) The annual application rate shall be the lesser of the two (2) application rates [as] determined for cadmium and for nitrogen utilization.

(2) The applicant shall determine the percent of available organic nitrogen in the special waste using the following calculation: Percent available organic N = (percent total N) - (percent NH<sub>4</sub>-N) - (percent NO<sub>3</sub>-N).

(3) The applicant shall determine the amount of nitrogen that shall be available for plant uptake at the landfarming site using one (1) of the following calculations depending on the application method:

(a) Incorporation: Lbs available N/ton = (percent NH<sub>4</sub>-N x 20) + (percent NH<sub>3</sub>-N x 20) + (percent available organic N x 4); or;

(b) Surface application: Lbs available N/ton = (percent NH<sub>4</sub>-N x 10) + (percent NO<sub>3</sub>-N x 20) + (percent available organic N x 4).

$$\text{Tons / acre} = \frac{\text{Nitrogen utilization rate of the vegetative cover}}{\text{Lbs available organic N / ton}}$$

(4) The annual application rate of cadmium from special waste shall not exceed 0.44 pound per acre. The annual application rate shall be determined using the following calculation:

$$\text{Tons / acre} = \frac{\text{pounds of allowable cadmium per acre}}{(\text{mg per kg of cadmium in sample}) \times 0.002}$$

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Section 8. Sludge Giveaway Program. A municipal water [or wastewater treatment] sludge generator may give away sludge equal to or less than the metal concentration limitation established/specified in Section 2(2) of this administrative regulation to persons for subsequent use as a soil conditioner. This program shall be operated under a registered permit-by-rule in accordance with this administrative regulation and 401 KAR 45:070. The maximum amount of sludge that may be distributed annually to any person is limited to 2,000/2000 pounds (dry weight).

(1) During operation of the giveaway program the generator shall:

(a) Maintain a list of names and addresses of all persons receiving the sludge;

(b) Submit annually to the cabinet the sludge analysis performed in accordance with the schedule established/contained in Section 6(20) of this administrative regulation, and a copy of the distribution log;

(c) Provide to persons receiving special waste, copies of the sludge analyses and a brochure, approved by the cabinet, explaining the proper procedures to be utilized in the landfarming of sludge; and

(d) Use a process to significantly reduce pathogens in accordance with Section 11 of this administrative regulation.

(2) Unless the sludge has undergone a process to further reduce pathogens in accordance with Section 12 of this administrative regulation, it shall not be used in a manner likely to allow direct human contact for a period of twelve (12) months from the date of application.

(3) The sludge generator shall maintain another approved means of sludge disposal to be used if the sludge is not given away.

Section 9. Operating Requirements for Composting Facilities. The owner or operator of a composting facility/facilities shall comply with the following:

(1) Within one (1) month of receiving any materials that do not meet standards for land application established in the permit or by this administrative regulation, [the owner or operator shall] dispose of the material in a facility permitted to accept the waste or special waste[waste management facility any materials that do not meet standards for distribution within one (1) month of such a determination];

(2) After the compost has completed the curing process, ensure that at least seventy-five (75) percent of the compost shall be distributed within one (1) year;

(3) Use one (1) or more processes to further reduce pathogens in accordance with Section 12 of this administrative regulation;

(4) Process and store compost on an impermeable pad, or provide information on soils at the facility and a groundwater quality assurance plan;

(5) [Each composting owner or operator shall ]Submit an annual report for the previous calendar year's activities to the cabinet by March 1<sup>st</sup> of each year[sixty (60) days prior to the anniversary date of the permit issuance]. The report shall be submitted on form DEP 7048A, [entitled "Annual Composting Review["] (November 2016). The requirements contained in the annual composting review are incorporated in this administrative regulation by reference. The review may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601 (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at [eec.ky.gov/environmental-protection/waste](http://eec.ky.gov/environmental-protection/waste); and

(6) Composting sites or facilities shall comply with all requirements established/set forth in 401 KAR 45:140.

Section 10. Usage of Composted and Treated Special Waste.

(1) Composted special waste and treated special waste that has undergone additional treatment to [a level of a process to] further reduce pathogens, as established/described in Section 12 of this administrative regulation, shall meet the [following] criteria established in paragraphs (a) through (c) of this subsection in order to be distributed or marketed to the general public.[:]

(a) The final product shall not exceed Type B metals concentration limits as established/specified in Section 2(2)/(1)(b) of this administrative regulation.

(b) A brochure shall accompany all compost or treated special waste sold or given away. The brochure shall be subject to cabinet approval and shall contain, at a minimum~~;~~ the following information:

1. The source or sources of the original material;

2. An[A recent] analysis of the parameters established in [in paragraph (b) of] Section 6(20)(b) within six (6) months of the finished product; and

3. Suggested uses and application rates for the product~~;~~ and]

(c) The quantity distributed shall be limited to fifty (50) tons per person per year for composted special waste and fifteen (15) tons per person per year for treated special waste.

(2) A final product that exceeds metals concentration limits or exceeds the quantity limitation established/set forth in subsection (1) of this section shall be disposed or distributed in accordance with the facility's permit ~~or otherwise directed by the cabinet~~.

Section 11. Processes to Significantly Reduce Pathogens. Processes to significantly reduce pathogens shall include one (1) or more of the following:

(1) Aerobic digestion. The process shall be conducted by agitating sludge with air or oxygen to maintain aerobic conditions at residence times ranging from sixty (60) days at fifteen degrees Celsius (15° C) to forty (40) days at twenty degrees Celsius (20° C), with a volatile solids reduction of at least thirty-eight (38) percent~~;~~[:]

(2) Air drying. Liquid sludge shall be allowed to drain or dry on under-drained sand beds, or paved or unpaved basins. Sludge in paved or unpaved basins[ in which the sludge] shall be at a depth of nine (9) inches. Air drying shall be conducted for a minimum of three (3) months, with two (2) months of temperatures that[which] average on a daily basis above zero degrees Celsius (0° C);[:]

(3) Anaerobic digestion. The process shall be conducted in the absence of air at residence times ranging from sixty (60) days at twenty degrees Celsius (20° C) to fifteen (15) days at thirty-five degrees Celsius (35° C) to fifty-five degrees Celsius (55° C), with a volatile solids reduction of at least thirty-eight (38) percent~~;~~[:]

(4) Composting. If[When] using the within-vessel, static aerated pile or windrow composting methods, the special waste shall be maintained at minimum operating conditions of forty degrees Celsius (40° C) for five (5) days. For four (4) hours during this period, the temperature shall exceed fifty-five degrees Celsius (55° C); or[:]

(5) Lime stabilization. Sufficient lime shall be added to produce a pH of twelve (12) for two (2) hours ~~[of contact time].~~

~~[(6)] [Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the above methods.]~~

Section 12. Processes to Further Reduce Pathogens. Processes to further reduce pathogens shall include one (1) or more of the following:

(1)(a) Composting.

1. Using the within-vessel composting method, the special waste shall be maintained at operating conditions of fifty-five degrees Celsius (55° C) or greater for three (3) days.

2. Using the static aerated pile composting method, the special waste shall be maintained at operating conditions of fifty-five degrees Celsius (55° C) or greater for three (3) days.

3. Using the windrow composting method, the special waste shall:

a. Attain a temperature of fifty-five degrees Celsius (55° C) or greater for at least fifteen (15) days during the composting period; and[:]

b. During the high temperature period, there shall be a minimum of five (5) turnings of the windrow.

b1. Heat drying. Dewatered sludge cake shall be dried by contact with hot gases, and moisture content shall be reduced to ten (10) percent or lower.

2. Sludge particles shall reach temperatures in excess of eighty degrees Celsius (80° C), or the wet bulb temperature of the gas

stream in contact with the sludge at the point when it leaves the dryer shall be in excess of eighty degrees Celsius (80° C).

(c) Heat treatment. Liquid sludge shall be heated to 180 degrees Celsius (180°C) for thirty (30) minutes.

(d) Thermophilic aerobic digestion. Liquid sludge shall be agitated with air or oxygen to maintain aerobic conditions at residence times of ten (10) days at fifty-five to sixty degrees Celsius (55° - 60° C), with a volatile solids reduction of at least thirty-eight (38) percent; ~~or.~~

~~[(e) Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the methods in paragraphs (a) to (d) of this subsection.]~~

(2) Any of the processes ~~established~~**[described]** in paragraphs (a) ~~through (c)]to (d)]~~ of this subsection ~~shall be added to the processes in Section 11 of this administrative regulation.~~ ~~if added to the processes described in Section 11 of this administrative regulation, further reduce pathogens. Because] The processes **established**~~[listed]~~ in paragraphs (a) **through (c)]to (d)]** of this subsection, on their own, do not reduce the attraction of disease vectors ~~but are meant to be added to the processes in Section 11 of this administrative regulation. The following processes shall be an additional method of reducing pathogens:~~ ~~they are only add-on in nature.]~~~~

(a) Beta ray irradiation. Sludge shall be irradiated with beta rays from an accelerator at dosages of at least one (1.0) megarad at room temperature, approximately twenty degrees Celsius (20° C); ~~and.]~~

(b) Gamma ray irradiation. Sludge shall be irradiated with gamma rays from certain isotopes, such as Cobalt-60 and Cesium-137, at dosages of at least one (1.0) megarad at room temperature, approximately twenty degrees Celsius (20° C); ~~and.]~~

(c) Pasteurization. Sludge shall be maintained for at least thirty (30) minutes at a minimum temperature of seventy degrees Celsius (70° C).

~~[(d) Other methods. Other methods or operating conditions may be acceptable if pathogens are reduced to an extent equivalent to the reduction achieved by any of the methods described in paragraphs (a) to (c) of this subsection.]~~

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Annual Landfarming Review", Form DEP 7048, (February 2023); and

(b) "Annual Composting Review", Forms DEP 7048A, (February 2023).

(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](http://eec.ky.gov/environmental-protection/waste).

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**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Waste Management  
(As Amended at ARRS, March 11, 2024)**

**401 KAR 45:105. Land application of biosolids.**

RELATES TO: KRS 224.1, 224.10, 224.40, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760(1)(d), 224.50-765, 40 C.F.R. Part 503

NECESSITY, FUNCTION, AND CONFORMITY: KRS **224.50-760(1)(d) authorizes****[Chapter 224 requires]** the cabinet to promulgate administrative regulations for the treatment, management, processing, or disposal of **special** wastes. KRS

224.40-305 requires persons who establish, construct, operate, maintain, or allow the use of a waste site or facility to obtain a permit. This administrative regulation establishes the standards and requirements for the application of biosolids, in accordance with 40 C.F.R. Part 503 and as required by KRS 224.50-765 from the treatment of domestic sewage or sewage sludge from a treatment facility. This administrative regulation is no more stringent than the corresponding federal rules but in order to comply with KRS 224.50-765(3), does have additional requirements that are not in 40 C.F.R. Part 503 related to a permitting program and siting criteria.

Section 1. Definitions.

(1) "Karst feature" means sinkholes, sinking streams, cave openings, fensters, and springs.

(2) "Ordinary high-water mark" means the line on the shore of a body of water established by the fluctuations of water and indicated by physical characteristics, such as defined, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, and the presence of litter and debris.

(3) "Seasonal high-water table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in years with normal rainfall.

(4) "Sinkhole" means a depression in the land surface resulting from the chemical dissolution of the underlying carbonate rocks that create a potential direct conduit from surface water flow into the underlying groundwater system. This includes the immediately adjacent catchment area that could direct surface water flow into the underlying groundwater system.

Section 2. General Provisions.

**(1) The general provisions related to the land application of biosolids shall be as established in 40 C.F.R. 503.5 through 40 C.F.R. 503.9.**

**(2)**

**(a) If a biosolid material is exempt from regulation pursuant to 40 C.F.R. 503.10, then the provisions of this administrative regulation shall not apply to the biosolid material, except as required in paragraph (b) of this subsection.**

**(b) The exemptions established in 40 C.F.R. 503.10 shall not exempt biosolids given away from the requirement to obtain a registered permit by rule established in 401 KAR 45:070.**

Section 3. Land Application of Biosolids.

(1) Except for additional siting criteria standards established in Section 5 of this administrative regulation, the requirements related to the application of biosolids to the land shall be as established in 40 C.F.R. 503.10 through 40 C.F.R. 503.18.

(2) An operator certified in accordance with 401 KAR 45:090 shall be available ~~to~~**at** the land application site while biosolids are being applied to the land. All sludge land application operations shall be accomplished under the direction of a certified landfarming operator.

(3) The reports required by 40 C.F.R. 503.18 shall also be sent to the Kentucky Division of Waste Management.

(4) **Each permittee****[Permittees]** shall submit to the cabinet ~~["~~**Annual Biosolids Land Application Report**~~"]~~, form DEP 4506 by March ~~31~~**[31<sup>st</sup>]** of each year on the land application activity that occurred in the previous year. Permittees shall submit the report for years with no land application activity.

(5) In addition to the notification requirements in 40 C.F.R. 503.12, the person who prepares the biosolids shall notify the ~~person~~**[persons]** applying the biosolids or owner or operator of a biosolids land application site that the biosolids ~~could~~**[may]** contain constituents from an industrial pretreatment program.

(6) The notifications provided pursuant to subsection (5) of this section shall be given to adjoining landowners by the ~~person~~**[persons]** applying the biosolids or owner or operator of a biosolids land application site.

**(7) The additional notifications in subsections (5) and (6) of this section shall be in writing and occur prior to submitting a biosolids application to the cabinet.**



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Section 4. Pathogens and Vector Attraction Reduction. The requirements related to the reduction of pathogens and the vectors that could transport those pathogens shall be as established in 40 C.F.R. 503.30 through 40 C.F.R. 503.33.

Section 5. Siting Criteria for Land Application of Biosolids. The land application of biosolids shall comply with the siting criteria in subsections (1) through (4) of this section.

- (1) Biosolids shall not be applied in the 100-year floodplain.
- (2)

(a) ~~An applicant/Applicants shall use the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document to determine when determining their aquifer type. A minimum of four (4) feet of soil between the soil surface and the seasonal high water table shall be maintained for land application in areas comprised of the Granular-unconsolidated and alluvial (Ohio River Alluvium) aquifers. The aquifer type determination shall be made by using the map in the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document. Buffers located in subsection (4) of this section shall be maintained for aquifer types in this paragraph.~~

(b) ~~A minimum of four (4) feet of soil between the soil surface and the seasonal high water table shall be maintained for land application in areas comprised of the Granular-unconsolidated, karst, and alluvial (Ohio River Alluvium) aquifers. Buffers located in the table in subsection (4) of this section shall be maintained for land application in areas comprised of karst, shallow fracture and deep granular-consolidated, and localized fracture and minor karst aquifer types. The aquifer type determination shall be made by using the map in the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document.~~

(3) A land application unit shall not be located on land with a slope greater than fifteen (15) percent.

(4)

(a) The ten (10) meter buffer zone for surface waters established/listed in 40 C.F.R. 503.14(c) shall not be used. All biosolid land application facilities shall maintain the following buffer zones:

Required Buffer Zones Minimum Distance in Feet from the Boundary of the Application Zone	
Structure or Object	Application Buffer
Residences and Occupied Buildings	200
Water Well	200
Surface Water including Perennial Streams	100
Karst Feature	100
Intermittent Stream	50
Ephemeral Stream	30
Property Line and Public Roads	30

(b) The distances measured for buffer zones shall be as established in subparagraphs 1. through 7. of this paragraph. ~~;~~

1. Residences and occupied buildings shall be measured from the building or residence to the closest boundary of the area that land application will occur.

2. Water wells buffer shall be measured from the well to the closest boundary of the area that land application will occur.

3. Surface Water including perennial streams buffer shall be measured from the baseline stream bank to the closest boundary of the area that land application will occur.

4. Karst features buffer shall be measured from the feature to the closest boundary of the area that land application will occur.

5. Ephemeral streams buffer shall be measured from the ordinary high-water mark to the closest boundary of the area that land application will occur.

6. Property line buffers shall be measured from the property line to the closest boundary of the area that land application will occur.

7. Public roads buffer shall be measured from the edge of the road to the closest boundary of the area that land application will occur.

Section 6. Biosolids Land Application Permit Required.

(1) A person/All persons operating under a permit issued prior to June 29, 2023 for the land application of biosolids shall operate in accordance with that permit until a renewal permit is issued by the cabinet. At the time for renewal, the applicant shall apply for a new permit under this administrative regulation.

(2) A person/All persons seeking to engage in the land application of biosolids after June 29, 2023 shall first obtain a permit issued in accordance with this administrative regulation from the cabinet prior to land application.

Section 7. Biosolid Land Application Permit Review.

(1) A person/Persons applying for a biosolids land application permit shall submit ~~[ ]~~Application for a Biosolid Land Application Facility Permit, ~~[ ]~~ form DEP 4505. The completed permit application shall be submitted to the cabinet and include all of the attachments that are required by the application form. The attachments in the application shall include:

- (a) Copies of property deeds or land application agreements;
- (b) Lists of landfills receiving biosolids;
- (c) Laboratory analysis of the biosolids;
- (d) An enlargement of a current United States Geological Survey topographic map. The map shall have a minimum scale of one (1) inch equals 400 feet and the contour interval as published; and
- (e) A certification statement.

(2) A fee in the amount established/specified in 401 KAR 45:250 shall accompany the permit application, unless the applicant is a municipality.

(3) The cabinet shall not require additional information that is not in the permit application. Any additional information requests shall be in the form of a notice of deficiency or in response to a variance request from the applicant pursuant to 401 KAR 30:020.

(4) The cabinet shall not review a permit application until the application has been deemed complete. An application for a biosolids land application permit shall be considered complete unless the forms submitted are incomplete or otherwise missing information ~~that/which~~ is necessary for review.

(5) If the application is determined to be incomplete, the cabinet shall notify the applicant of all the deficiencies that render it incomplete. ~~[and]~~ the applicant shall have the right to correct deficiencies identified by the cabinet. If the cabinet determines that the application is incomplete two (2) or more times, that determination shall be considered final and the applicant shall have the right to file a petition pursuant to KRS 224.10-420.

(6)

(a) The cabinet shall review complete applications and issue a final determination based on the submitted application, within 120 calendar days of the official day the permit application was received.

(b) The official date of receipt for a permit application shall be:

1. The date the paper document is stamped received by the Division of Waste Management; or

2. The submission date created by electronic submittal portal.

(c) The cabinet's review timeframe shall be paused from the date:

1. The cabinet mails, hand delivers, or electronically sends a notice of deficiency until the date the Division of Waste Management receives the response to the deficiencies as established in paragraph (b) of this subsection; and

2. A permit application is subject to an adjudicatory process that prevents the cabinet from making a determination to the date the administrative or judicial hearings are final and the parties are in compliance with the final orders resulting from those hearings.

(d) The timetables established in this section may be extended at the initiative of either the cabinet or the applicant. The purpose and period of the extension shall be in writing and, if agreed to by both parties, shall be signed by both the cabinet and the applicant. The agreement to extend the timetable shall become part of the cabinet's permit file.

(7)

(a) Upon final determination/approval of the permit application, the cabinet shall post on its Web page, a public notice of the permit determination/issuance.

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**(b) A person[Persons] aggrieved by the final determination of the cabinet shall be afforded an opportunity to appeal the decision pursuant to KRS 224.10-420(2).**

**(c) Land application of biosolids under the approved permit shall not begin until thirty (30) days from the date of the posted public notice as established in paragraph (a) of this subsection.**

Section 8. Modification of Permits. A biosolids land application permit may be modified during its term. The modification shall be in accordance with this section.

(1) If a permit is modified, only the conditions related[subject] to modification shall be reopened.

(2) Modifications requested by the permittee shall not be considered by the cabinet until the permittee has submitted a completed [ ] Application for a Biosolid Land Application Facility Permit, [ ] form DEP 4505, to the cabinet.

(3) Causes for modification. Causes for modification of permits shall include:

(a) Material and substantial alterations or additions to the permitted special waste site or facility that would justify new permit conditions that are different or absent in the existing permit;

(b) The cabinet determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable available remedy;

(c) The cabinet receiving notification of expected closure and finds that one (1) or more of the permit conditions are no longer warranted;

(d) The corrective action program established in the permit has not brought the site into compliance with the groundwater protection standards;

(e) To approve a corrective action plan required by 401 KAR 45:160;

(f) To include conditions applicable in new or amended statutes or administrative regulations;

(g) To include conditions applicable as a result of a hearing or enforcement action as established in 401 KAR Chapter 40;

(h) Ownership of the special waste site or facility changes;

(i) To expand the capacity of a special waste site or facility; or

(j) To add a new special waste source.

(4) All terms of an existing permit shall remain in effect during the permit modification request.

(5) The cabinet shall make a final determination based on the submitted application, to approve or disapprove a permit modification within ninety (90) calendar days.

Section 9. Permit Transfers. A permit shall not be transferable to any person without prior approval of the cabinet. For purposes of this section, a permit transfer application shall be required if a person requests that the name on the permit be changed to a different person or entity or if the permittee is a corporation and fifty-one (51) percent or more of the stock is sold to a person who was not previously a stockholder, or was a stockholder owning less than five (5) percent of the stock.

(1) A person requesting to transfer a permit for an existing special waste site or facility shall submit to the cabinet a completed Application to Transfer a Special Waste Permit form DEP 7094C, incorporated by reference in 401 KAR 45:040.

(2) Based on the submitted application, the cabinet shall make a final determination to approve or disapprove a formal permit transfer within sixty (60) calendar days.

(3) If the transfer application is incomplete, the cabinet shall notify the applicant in writing of all the deficiencies. Periods of deficiency shall not be counted against the review time frame. Failure to submit information noted by the cabinet related to the deficiencies within fifteen (15) calendar days of receipt of the notice of deficiency shall be[is] grounds for disapproval of the transfer application.

Section 10. Suspension and Revocation of Biosolid Land Application Permits.

(1) The cabinet may modify, suspend, or revoke a permit issued under this chapter for:

(a) Violation of any requirement of KRS Chapter 224, 401 KAR Chapter 45[this chapter], or 401 KAR 30:031;

(b) Aiding, abetting, or allowing the violation of KRS Chapter 224, 401 KAR Chapter 45[this chapter], or 401 KAR 30:031;

(c) A Violation of a condition or a variance of the special waste site or facility permit;

(d) Misrepresentation or omission of a significant fact by the owner or operator either in the application for the permit or in information subsequently reported to the cabinet;

(e) Failure to comply with an order issued by the cabinet; or

(f) The facility is transferred to another person without prior approval of the cabinet.

(2) The cabinet shall follow the applicable procedures in this administrative regulation and 401 KAR Chapter 40 in revoking any permit under this section.

(3) If a permit is revoked, the owner or operator may reapply.

(4) Upon revocation of a permit, an owner or operator of a special waste site or facility may file a request for a hearing. A hearing request shall be pursuant to KRS 224.10-420 upon revocation of the permit.

Section 11. Permit Renewals.

(1) Applications for renewal shall be submitted to the cabinet at least ninety (90) calendar days prior to the expiration of the permit. A person[Persons] applying for a renewal shall submit a completed Application for a Biosolid Land Application Facility Permit form DEP 4505, to the cabinet.

(2) Applications for renewal shall comply with[be subject to] the review requirements in this administrative regulation.

(3) The cabinet shall consider if[whether] all conditions of prior permit conditions have been met.

Section 12. Closure of a Biosolid Landfarming Site or Facility.

(1) A landfarming site or facility shall send a letter of closure to the cabinet if:

(a) An owner or operator determines to permanently cease accepting biosolid at a special waste landfarming site or facility and does not exceed limits pursuant to Section 3 of this administrative regulation; or

(b) The landfarming site or facility has reached the limits in 40 C.F.R. 503.13 and is required to cease accepting biosolid at that location.

(2) The notification shall be a letter to the cabinet indicating the special waste landfarming site or facility is in compliance with regulatory requirements and is no longer accepting biosolid at the location.

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for a Biosolid Land Application Facility Permit", Form DEP 4505, (December[July] 2023);

(b) "Annual Biosolids Land Application Report", Form DEP 4506, (December[July] 2023); and

(c) "Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers", (July 2023).

(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](http://eec.ky.gov/environmental-protection/waste).

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ENERGY AND ENVIRONMENT CABINET  
 Department for Environmental Protection  
 Division of Waste Management  
 (As Amended at ARRS, March 11, 2024)

401 KAR 45:140. Conditions applicable to all special waste permits.

RELATES TO: KRS ~~224.1~~[224.04], 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~224.50-760(1)(d)~~ ~~authorizes~~[Chapter 224 requires] the cabinet to ~~promulgate~~[adopt] administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or ~~allow~~[permit] the use of a waste site or facility to obtain a permit. ~~[This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.]~~ This administrative regulation ~~establishes~~[sets forth] the conditions applicable to all special waste permits.

Section 1. Conditions Applicable to All Permits. The conditions applicable to a special waste site or facility shall be incorporated into the permit either expressly or by reference.

(1) Duty to comply. The owner or operator shall comply with all conditions of the permit and all approved plans in the permit application. Any permit noncompliance ~~shall constitute~~[constitutes] a violation of the appropriate ~~requirement~~ in KRS Chapter 224 [Kentucky Revised Statute] and ~~shall be~~[is] grounds for enforcement action that may result in revocation, modification, or denial of a permit application.

(2) Duty to reapply. If the owner or operator wishes to continue an activity regulated by the permit after the expiration date of the permit, ~~then~~[if applicable,] the owner or operator shall apply for and obtain a new permit.

(3) Duty to halt or reduce activity. It shall not be a defense for an owner or operator in an enforcement action to claim necessity to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. The owner or operator shall comply with ~~401 KAR Chapter 45~~[this chapter] before commencing operations.

(4) Duty to mitigate. In the event of noncompliance with the permit, the owner or operator shall take all reasonable steps to minimize releases to the environment, and shall carry out ~~[such]~~ measures ~~that~~[as] are reasonable to prevent ~~additional releases or other noncompliances with 401 KAR Chapter 45 and KRS 224.50-760~~[significant adverse impacts on human health and the environment].

(5) Proper operation and maintenance. The owner or operator shall at all times properly operate and maintain all facilities and systems of treatment and control that are installed or used by the owner or operator to achieve compliance with the conditions of the permit. Proper operation and maintenance ~~shall include~~[includes]:

(a) Effective performance;[;]

(b) Adequate funding;[;]

(c) Adequate operator staffing and training;[;] and

(d) Process controls, including appropriate quality assurance procedures.

(6) Permit actions. The permit may be modified or revoked ~~due to noncompliance~~[non-compliances] with the provisions of ~~401 KAR Chapter 45 or~~[this chapter and] KRS 224.50-760[Chapter 50].~~[for cause.]~~ The filing of a request by the owner or operator for a permit modification, revocation, or termination, or a notification of planned changes or anticipated noncompliance, shall not stay any permit condition.

(7) Property rights. The permit shall not convey any property rights or any exclusive privilege.

(8) Duty to provide information. The owner or operator shall ~~provide~~[furnish] the cabinet with ~~[any]~~ information that the cabinet reasonably requests to determine ~~if~~[whether] cause exists for modifying, revoking, or terminating the permit, or to determine

compliance with the permit or ~~[any provision of KRS Chapter 224 or 401 KAR Chapter 45~~[this chapter]. The owner or operator shall ~~[also]~~ ~~submit~~[furnish] to the cabinet upon request, copies of records required ~~under the conditions of the permit~~ to be kept by the permittee.

(9) Inspection and entry. The owner or operator shall allow the cabinet ~~[or its authorized representative]~~ to:

(a) Enter upon the owner's or operator's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of the permit;

(b) Have access to and copy at reasonable times any records that are kept under the conditions of the permit;

(c) Inspect any facility's equipment, including monitoring and control equipment, practices, or operations regulated or required under the permit; and

(d) Sample or monitor, for the purposes of assuring permit compliance or determining compliance with KRS Chapter 224 or ~~401 KAR Chapter 45~~[this chapter], any substances or parameters within the boundaries of the permitted area and outside the boundaries of the permitted area if necessary to determine the environmental impacts resulting from a permitted activity~~[at any location]~~.

(10) Signatory requirement. All applications, reports, and information submitted to the cabinet shall be signed and certified in accordance with ~~[Section 10 of]~~ 401 KAR 45:030, ~~Section 10~~.

(11) Authorization to operate. For a new special waste site or facility, or a facility undergoing an expansion or modification as stated in 401 KAR 45:040, the owner or operator shall not commence storage, treatment, or disposal of special waste in the modified portion of the facility until:

(a) The owner or operator has submitted to the cabinet, by certified mail or hand delivery, a request for the issuance of a ~~construction and operation~~[construction/operation] permit signed by the owner or operator stating that the facility has been constructed or modified in compliance with the construction permit. The request shall be accompanied by a fee ~~established~~[specified] in ~~[Section 2(1)(d) of]~~ 401 KAR 45:250, ~~Section 2(1)(d)~~; and

(b) The cabinet has inspected the newly constructed or modified facility and issued a special waste ~~construction and operation~~[construction/operation] permit or modified ~~[construction/operation]~~ permit.

(12) Transfers. The permit shall not be transferable to any person without prior approval of the cabinet. Proposed new owners or operators shall submit a complete transfer permit application to the cabinet in accordance with ~~[Section 3 of]~~ 401 KAR 45:040, ~~Section 3~~.

(13) Monitoring reports. Monitoring results shall be reported at the intervals ~~established~~[specified] in the approved permit application.

(14) Compliance schedules. Reports of compliance with, or any progress reports on, requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen (14) days following each scheduled date.

(15) Reports. ~~[Periodic]~~ Reports ~~[as]~~ required in ~~401 KAR Chapter 45~~[this chapter] or in the permit shall be submitted to the cabinet ~~on the dates required in 401 KAR Chapter 45~~[this chapter] or in the permit~~[on a timely basis]~~.

(16) Other information. If the owner or operator fails to submit any relevant facts in a permit application, or submits incorrect information in a permit application or in any report to the cabinet, ~~the owner or operator~~[he] shall promptly submit the facts or correct information.

Section 2.

(1) Establishing Permit Conditions. In addition to conditions required for all permits in Section 1 of this administrative regulation, the cabinet shall establish conditions on a case-by-case basis in permits ~~to ensure compliance with the requirements of 401 KAR Chapter 45~~[this chapter].

(2) The cabinet may incorporate applicable requirements directly into the permit. Each special waste permit issued by the cabinet shall contain conditions as the cabinet determines necessary to ~~assist in~~

compliance with the approved application and 401 KAR Chapter 45 ~~[this chapter]~~ [protect human health and the environment].

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**ENERGY AND ENVIRONMENT CABINET**  
**Department for Environmental Protection**  
**Division of Waste Management**  
**(As Amended at ARRS, March 11, 2024)**

**401 KAR 45:160. Surface and groundwater monitoring and corrective action for special waste sites or facilities.**

RELATES TO: KRS 224.1 ~~[224.04]~~, 224.10, 224.40, 224.46, 224.50, 224.99, Chapter 322A, 40 C.F.R. 302.4, Appendix A  
 STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760 ~~(1)(d)~~, 40 C.F.R. 302.4

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(1)(d) ~~authorizes~~ ~~[Chapter 224 requires]~~ the cabinet to ~~promulgate~~ ~~[adopt]~~ administrative regulations for the treatment, management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. ~~[This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.]~~ This administrative regulation ~~establishes~~ ~~[sets forth]~~ the standards for groundwater and surface water monitoring and corrective action at special waste sites or facilities. ~~This administrative regulation does not establish requirements for surface or groundwater monitoring of special waste sites or facilities where biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility have been land applied, except as it applies to biosolid permit corrective action plans.~~

Section 1. Applicability.

(1) The requirements of this administrative regulation apply to owners and operators of special waste landfills, Type A special waste landfarming or composting sites or facilities, other special waste sites or facilities at which the cabinet determines groundwater and surface water monitoring shall be required pursuant to 401 KAR 45:100, Section 3(3), and special waste sites or facilities required to perform corrective action as a result of documented groundwater contamination.

(2) Designs, reports, and plans constituting the “public practice of geology”, as defined by ~~[in]~~ KRS 322A.010(3), shall be developed by a person registered pursuant to KRS Chapter 322A, except as established in ~~[provided for]~~ by KRS 322A.080.

(3) ~~(a)~~ Landfarming and composting sites or facilities required to monitor surface water shall comply with ~~[Section 6(26) of ]~~ 401 KAR 45:100, Section 6(26).

~~(b)~~ Landfarming and composting sites or facilities required to perform corrective action shall comply with Section 5 of this administrative regulation.

~~(c)~~ The owner or operator shall satisfy the requirements of this administrative regulation for all wastes and waste constituents contained in the site or facility.

~~(d)~~ The cabinet may waive baseline groundwater characterization and groundwater monitoring, in accordance with ~~[subject to]~~ the provisions of 401 KAR 30:020.

Section 2. Design Requirements for Groundwater Monitoring Systems.

(1) The groundwater quality monitoring system to be utilized in the groundwater monitoring plan shall accurately analyze groundwater quality and characterize regional and local groundwater flow and flow systems. The monitoring system shall include ~~[consist]~~ at a minimum, of the monitoring requirements established in paragraphs (a) and (b) of this subsection. ~~[following:]~~

~~(a)~~ ~~(1)~~ Background wells shall be located so that they will not be affected by groundwater contamination from the disposal area. Background wells shall be placed as established ~~[described]~~ in subparagraphs 1. and 2. ~~[paragraphs (a) and (b)]~~ of this paragraph ~~[subsection]~~.

~~1.~~ ~~(a)~~ At least one (1) background well shall be placed at a point hydraulically upgradient from the disposal area in the direction of increasing static head that is capable of providing data representative of groundwater not affected by the special waste site or facility.

~~2.~~ ~~(b)~~ ~~If~~ ~~[When]~~ the special waste site or facility occupies the most upgradient position in the flow system or the upgradient area is not representative, sufficient downgradient or side gradient monitoring wells shall be placed to accurately characterize the groundwater quality and regional and local groundwater flow systems. ~~Background wells shall be located so that they will not be affected by groundwater contamination from the disposal area;~~ and

~~(b)~~ ~~1.~~ ~~(2)~~ At least two (2) monitoring wells shall be placed at points hydraulically downgradient in the direction of decreasing static head from the area in which special waste has been or will be disposed.

~~2.~~ The cabinet may allow springs for monitoring points if the springs are hydraulically downgradient from the area in which special waste has been or will be disposed, if the springs are developed and protected in a manner approved by the cabinet, and if the springs are capable of detecting any contamination from the disposal facility.

~~3.~~ Downgradient monitoring wells shall be located so that they will provide early detection of groundwater contamination and progressive monitoring of the phases and units of the site or facility.

~~(2)~~ ~~(3)~~ An alternative monitoring plan may be proposed in an application for a special waste site or facility in accordance with ~~[Section 3(2) of ]~~ 401 KAR 45:110, Section 3(2).

Section 3. Requirements for Monitoring Well Construction.

(1) ~~(a)~~ Precautions shall be taken during drilling and construction of monitoring wells to avoid introducing contaminants into the borehole.

~~(b)~~ Only potable water shall be used in drilling monitoring wells, ~~unless otherwise approved by the cabinet~~.

~~(c)~~ Drilling muds shall not be used except with prior approval of the cabinet.

~~(d)~~ Air systems and drilling lubricants shall not introduce contaminants into the boreholes.

(2) Decontamination of all equipment to be placed into the boring shall be performed before use at the site and between boreholes. ~~If~~ ~~[Where]~~ possible, upgradient wells shall be drilled first.

(3) Monitoring wells shall be cased as follows:

(a) In a manner to ensure the integrity of the monitoring well borehole by isolating water bearing units which are sampled by each well;

(b) With a minimum casing diameter of four (4) inches, unless otherwise approved by the cabinet in writing;

(c) With screens and appropriate gravel or sand where necessary, to enable collection of samples at depths where appropriate aquifer flow zones exist;

(d) To allow the casing to protrude at least one (1) foot above ground;

(e) To provide a drill hole diameter that is a minimum of four (4) inches larger than the outside diameter of the well casing;

(f) To produce an annular space above the sampling depth that is sealed to prevent contamination of samples and the groundwater; and

(g) If plastic casing is used, it shall be threaded and gasket sealed to preclude potential sample contamination from solvent welded joints, unless otherwise provided by the cabinet in the permit.

(4) Monitoring well casings shall be enclosed in a protective cover that shall:

(a) Be of sufficient strength to protect the well from damage by heavy equipment and vandalism, and also include protective barrier steel posts at the corners of the concrete pad;

(b) Be installed into firm rock, unless otherwise approved by the cabinet;

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(c) Be grouted and placed with a cement collar below the frost line to hold it firmly in position, unless otherwise approved by the cabinet;

(d) Be numbered and painted in a highly visible color;

(e) Protrude at least one (1) inch higher above grade than the monitoring well casing;

(f) Have a locking cap; and

(g) Be made of steel or any other material of equivalent strength.

(5) Each monitoring well shall have a concrete pad extending two (2) feet around the well and sloped away from the well.

### Section 4. Sampling and Analysis.

(1) Parameters listing. Owners or operators of special waste sites or facilities that require groundwater monitoring shall conduct sampling and analysis from each monitoring well for the parameters established~~[listed]~~ in Section 8 of this administrative regulation.

(2) Reporting of analysis results. Analyses of data required by this section shall be submitted to the cabinet. The reporting may be submitted on a form provided by the cabinet or in another format. The report shall be submitted within sixty (60) days of sampling or fifteen (15) days after completion of analyses, whichever is sooner, unless the cabinet approves another time period in the permit. Frequency of sampling shall be as established~~[indicated]~~ in Section 8 of this administrative regulation.

(3) If analysis of the sample results indicates contamination, the owner or operator shall notify the cabinet within forty-eight (48) hours of receiving the analysis results and shall arrange for the cabinet to split a sample no later than ten (10) days from the receipt of the results.

### Section 5. Groundwater Contamination Assessment and Corrective Action.

(1) The owner or operator of a special waste site or facility shall prepare and submit a groundwater assessment plan if laboratory analyses of one (1) or more public or private water supplies or monitoring wells at the site or facility shows the presence of one (1) or more parameters established~~[listed]~~ in 40 C.F.R. 302.4 Appendix A~~[as of September 1991]~~, above the maximum contaminant level (MCL) as established~~[specified]~~ in 401 KAR 30:031 or significant increase over established background levels for parameters that have no MCL. For parameters that have no maximum contaminant levels, a significant increase over background shall be determined using a statistical test as established~~[specified]~~ in Section 6 of this administrative regulation.

(2) Confirmation sampling. The owner or operator of a special waste site or facility shall not be required to submit a groundwater assessment plan if ~~[the following conditions are met]~~:

(a) Within ten (10) days after receipt of sample results showing groundwater contamination the owner or operator resamples the affected wells; and

(b) Analysis from resampling establishes~~[shows to the cabinet's satisfaction]~~ that groundwater contamination has not occurred.

(3) The owner or operator of a special waste site or facility shall ~~[be required to]~~ provide alternate water supplies to affected parties within twenty-four (24) hours of notification of the cabinet that sample results indicate contamination of a drinking water supply if it has been determined that the special waste site or facility is the probable source of contamination.

(4) The groundwater assessment plan shall be submitted to the cabinet within thirty (30) days of the occurrence of the conditions established~~[described]~~ in subsection (1) of this section. The assessment plan shall state~~[specify]~~ the manner in which the owner or operator will determine the existence, quality, quantity, areal extent, and depth of groundwater degradation, and the rate and direction of migration of contaminants in the groundwater. The assessment plan shall be prepared by a registered geologist pursuant to ~~[subsection (2) of Section 1(2) of this administrative regulation]~~ qualified professional in the field of hydrogeology and shall be implemented upon approval by the cabinet in accordance with the approved implementation schedule. The assessment plan shall be implemented within sixty (60)

days after approval by the cabinet. The plan shall contain, at a minimum, ~~[the following information]~~:

(a) The number, location, size, casing type and depth of wells, lysimeters, borings, pits, piezometers, and other assessment structures or devices to be used;

(b) Sampling and analytical methods for the parameters to be evaluated;

(c) Analyses of all parameters listed in the approved monitoring plan in the permit application, and any other parameter required by the cabinet; and

(d) Evaluation procedures, including the use of previously gathered groundwater quality information, to determine the concentration, rate, and extent of groundwater degradation or pollution from the facility.

(5) For public or private water supplies that could~~[may]~~ be adversely affected by the facility, the owner or operator shall submit a detailed hydrogeologic study addressing the potential effect of the site or facility on the water supply.

(6) If the ~~[cabinet determines that the]~~ assessment plan is inadequate, the cabinet may modify the plan and approve the plan as modified.

(7) Within ninety (90) days after the implementation of the groundwater assessment plan, the owner or operator shall submit a groundwater assessment report containing the new data collected, analysis of the data, and recommendations on the necessity for abatement.

(8) The cabinet may require abatement measures prior to approval of the groundwater assessment plan. These are conditions that require the declaration of a secretary's emergency, as established in KRS 224.01-400, or impacts to offsite receptors, including to the public or the environment.

(9) Within ninety (90) days of cabinet approval of the groundwater assessment report, but no later than one (1) year from the event established~~[specified]~~ in subsection (1) of this section, the owner or operator shall submit a remedial action plan to include ~~[the following]~~:

(a) The specific methods or techniques to be used to abate groundwater contamination from the facility;

(b) The specific methods or techniques to be used to prevent further groundwater contamination from the facility; and

(c) A description of the means used to restore or replace public or private water supplies affected by contamination from the special waste facility.

(10) The owner or operator of a special waste site or facility shall take any other steps deemed necessary by the cabinet to ensure protection of human health and the environment.

(11) Corrective action measures under this administrative regulation shall be initiated and completed within a period of time as established~~[specified]~~ by the cabinet considering the extent of degradation determined pursuant to subsection (1) of this section.

(12) Corrective action measures under this administrative regulation may be terminated upon approval of the cabinet if~~[when]~~ the owner or operator demonstrates that concentrations have been reduced to levels below the maximum contaminant level or naturally occurring background.

Section 6. Statistical Methods for Groundwater Analysis. The owner or operator of a special waste site or facility shall use the following statistical procedure in determining if~~[whether]~~ background values or concentration limits have been significantly exceeded:

(1) If the level of a parameter is to be compared to the parameter's background value and that background value has a sample coefficient of variation less than one (1.00):

(a) The owner or operator shall take at least four (4) portions from a sample at each well and determine whether the difference between the mean of the parameter at each well, using all portions taken, and the background value for the parameter is significant at the 0.05 level using the Cochran's Approximation to the Behrens-Fisher Students' t-test. If the test indicates that the difference is significant, the owner or operator shall repeat the same procedures, with at least the same number of portions as used in the first test, with fresh samples from the monitoring wells. If this second round of

analyses indicates that the difference is significant, the owner or operator shall conclude that a statistically significant change has occurred; or

(b) With prior approval from the cabinet, the owner or operator may use an equivalent statistical procedure for determining ~~if/whether~~ a statistically significant change has occurred. The cabinet shall approve ~~the/such-a~~ procedure in the permit if it is found that the alternative procedure reasonably balances the probability of falsely identifying a noncontaminating facility and the probability of failing to identify a contaminating facility in a manner that is comparable to that of the statistical procedure ~~established/described~~ in paragraph (a) of this subsection; ~~and/.~~

(2) In all other situations, the owner or operator shall use a statistical procedure approved in the permit ~~that/which~~ provides reasonable confidence that the migration of contamination from a special waste site or facility into and through the groundwater will be indicated. The cabinet shall approve a statistical procedure in the permit that:

(a) Is appropriate for the distribution of the data used to establish background values or concentration limits; and

(b) Provides a reasonable balance between the probability of falsely identifying a noncontaminating facility and the probability of failing to identify a contaminating facility.

Section 7. Baseline Groundwater Quality Characterization Parameters. For special waste sites or facilities that require groundwater monitoring, the following parameters are to be analyzed and the resulting data submitted in the permit application:

(1) For all landfarming or composting sites or facilities required to monitor groundwater, the characterization shall be based on the following ~~[dissolved]~~metals and other waste analysis based parameters:

1. Specific conductance;
2. Chemical oxygen demand;
3. Total organic carbon;
4. Chloride;
5. Iron;
6. Manganese;
7. Sodium;
8. Total nitrogen;
9. Nitrate nitrogen;
10. Chromium;
11. Cadmium;
12. Coliform bacteria;
13. pH;
14. Calcium;
15. Magnesium;
16. Potassium;
17. Sulfate Bicarbonate; and
18. Carbonate.

(b) Groundwater elevation in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a United States Geological Survey (USGS) datum; ~~and/.~~

(2) For special waste landfills, used solely for the disposal of coal combustion by-products, the characterization shall be based on the following dissolved metals and other parameters:

1. Chloride;
2. Chemical oxygen demand;
3. Total dissolved solids;
4. Total organic carbon;
5. Specific conductance;
6. pH;
7. Copper;
8. Nickel;
9. Zinc;
10. Iron;
11. Sodium;
12. Arsenic;
13. Cadmium;
14. Lead;
15. Mercury;
16. Selenium;
17. Calcium;

18. Magnesium;
19. Potassium;
20. Sulfate;
21. Bicarbonate; and
22. Carbonate.

(b) Groundwater elevations recorded as a distance from the elevation at the well head referenced to mean sea level based on a United States Geological Survey (USGS) datum; ~~and/.~~

(3) For special waste sites or facilities other than those ~~established/specified~~ in subsections (1) and (2) of this section, the characterization shall be for parameters determined by the cabinet based on a review of the chemical analysis of the waste provided in the application.

Section 8. Groundwater Monitoring Parameters.

(1) Owners or operators of landfarming or composting sites or facilities requiring groundwater monitoring shall monitor for the following parameters on a semiannual basis:

1. Chemical oxygen demand;
2. Total organic carbon;
3. Total nitrogen;
4. Nitrate nitrogen;
5. Lead;
6. Chromium;
7. Cadmium; and
8. Coliform bacteria; ~~and/.~~

(b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a USGS datum; and

(c) Monitoring of additional parameters ~~that~~ may be required by the cabinet based on the waste analysis.

(2) ~~(a)~~ Owners or operators of special waste landfills used solely for the disposal of coal combustion by-products shall monitor semiannually for ~~the following~~:

1. ~~(a)~~ Chloride;
2. ~~(b)~~ Chemical oxygen demand;
3. ~~(c)~~ Total dissolved solids;
4. ~~(d)~~ Total organic carbon;
5. ~~(e)~~ Specific conductance;
6. ~~(f)~~ pH; and
7. ~~(g)~~ Copper; ~~and/.~~

2. ~~(b)~~ Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a USGS datum; ~~and/.~~

3. ~~(c)~~ Monitoring of additional parameters ~~that~~ may be required by the cabinet based on a significant increase from the baseline characterization.

~~(b)~~ ~~(d)~~ If, after four (4) initial monitoring events, analysis for the parameters in paragraph (a) 1. through 3. [paragraphs (a) to (c)] of this subsection indicates no exceedances above levels ~~established/specified~~ in Section 5(1) of this administrative regulation, the owner or operator may, upon request, be granted permission from the cabinet to reduce the monitoring parameters to those ~~established/listed~~ in paragraph (a) of this subsection.

(3) Owners or operators of special waste sites or facilities other than those referenced in subsections (1) and (2) of this section shall monitor quarterly for parameters to be determined by the cabinet based upon chemical analysis of the waste to be disposed.

Section 9. Surface Water Monitoring and Corrective Action.

(1) Special waste sites or facilities required to monitor surface water shall do so in accordance with a plan provided in the permit application. The plan shall be sufficient to characterize the quality of surface water unaffected by the site or facility and to determine if water leaving the site or facility has been contaminated.

(a) Baseline sampling shall include a minimum of two (2) samples collected at no less than thirty (30) day intervals and shall be sufficient to characterize baseline conditions.

(b) Operational surface water monitoring shall be completed in accordance with the surface water monitoring plan approved in the permit application and shall be sufficient to determine if the site or facility is contaminating surface water.

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(2) Corrective action shall be completed by a special waste site or facility owner or operator as necessary to comply with 401 KAR 30:031.

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**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Waste Management  
(As Amended at ARRS, March 11, 2024)**

**401 KAR 45:250. Special waste permit fees.**

RELATES TO: KRS 224.40

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(20) ~~authorizes the cabinet to promulgate an administrative regulation to establish~~ states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. ~~[This chapter establishes standards for special waste sites or facilities.]~~ This administrative regulation establishes a fee schedule for the issuance and modification of special waste site or facility permits.

Section 1. Applicability. ~~[(4)]~~ The provisions of this administrative regulation shall apply to:

(1) the owner or operator of each special waste site or facility required to apply for a permit, permit renewal, permit modification, or permit transfer, except publicly-owned facilities; ~~and;~~

(2) ~~[The provisions of this administrative regulation shall also apply to ]~~ Special waste site or facility permit applications for the land application of biosolids ~~[submitted on or after June 24, 1992].~~

Section 2. Filing Fees.

(1) Each permit application shall be accompanied by an appropriate filing fee determined as follows:

Application	Fee
(a) Notice of intent	\$500
(b) Request for alternate specification to design criteria or variance from regulatory requirements	\$500
(c) Formal application and modifications to expand the facility horizontally	\$5,000
(d) Construction/operation permit	\$500
(e) Renewal	\$500
(f) Permit modifications other than horizontal expansions:	
1. Vertical expansions	\$1,000
2. Modification to closure plan	\$500
3. Receipt of waste from new source	\$50
4. Change of ownership or transfer of an existing permitted facility	\$500
5. Cabinet mandated increase in financial assurance	\$0
6. Closure of a facility that is not under a current special waste facility permit	\$1,000
7. Modifications not otherwise specified	\$500
(g) Emergency permit	\$500
(h) Research, development and demonstration permit	\$2,500

(2) A filing fee shall be in the form of a check or money order and made payable to the Kentucky State Treasurer. Filing fees shall not be refundable.

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**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Waste Management  
(As Amended at ARRS, March 11, 2024)**

**401 KAR 103:005. Definitions ~~for~~ related to 401 KAR Chapter 103.**

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), ~~[224.10-100](30), (31), 224.10-285, [224.43-345, ]~~ 278.710(3) ~~-, (4), ]~~ (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-285(2) requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation ~~established~~ set for in KRS 278.710(3) ~~through~~ through (4), (5), and (7) through (10) and 224.10-100(30) and (31). This administrative regulation defines ~~essential~~ terms that are used in **401 KAR Chapter 103** ~~[this chapter].~~

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 and Chapter 278, terms in 401 KAR Chapter 103 shall have the meanings given in this section.

(1) "Abandon" or "Abandonment" means the relinquishment of all rights, title, or claim to the merchant electric generating facility.

(2) "Above-ground ~~facility~~ facilities" means any portion of a system or structure located on the surface of the site.

(3) "Annual report" means a yearly document that ~~includes~~ describes all operational activities in the previous year.

(4) "Applicant" means any person ~~[who received a construction certificate pursuant to KRS 278.710, or ]~~ who is seeking the transfer of a construction certificate for ownership or control, or rights and obligations under a construction certificate, ~~[controlling rights, or ownership ]~~ of a constructed and generating merchant electric generating facility.

(5) "Cabinet" is defined by KRS 224.1-010(8).

(6) "Commence to construct" is defined by KRS 278.700(4).

(7) "Components" means ~~either~~

(a) The solar panel or ancillary equipment of a solar array or solar panel system; ~~or~~

(b) A constituent part of the solar panel or solar array.

(8) "Construction certificate" means a formal certification approved and issued by the Kentucky State Board on Electric Generation and Transmission Siting (~~["Siting ]~~board) ~~[to an owner-operator, or persons who have controlling rights, of a merchant electric generating facility ]~~ that authorizes a person ~~[persons]~~ to construct and operate a merchant generating facility.

(9) "Construction certificate holder" means any person who received board approval to construct a merchant ~~[merchang] electric generating facility pursuant to KRS 278.710(1)[178.710(1)] or any person who received approval to acquire~~ ~~[acquirer] rights and obligations under the construction certificate pursuant to KRS 278.710(3)(b).~~

(10) "Control" is defined by KRS 278.010(19).

(11) ~~(10)~~ "Current net salvage value" means, in current US dollars, the:

(a) Value of an asset ~~[expressed in current US dollars ]~~ after the asset ~~[it]~~ has become useless to the owner; ~~or [the]~~

(b) Amount expected to be obtained ~~if~~ when a fixed asset is disposed of at the end of its useful life and pursuant to KRS 278.706(2).

(12) ~~(11)~~ "Decommission" means the process of removing components ~~[removal] or facilities~~ ~~[closing of solar panel system]~~ at the end of the useful life.

(13) ~~(12)~~ "Decommission bond" or "Decommissioning bond" means an approved financial assurance mechanism used to guarantee the land used for a merchant electric generating facility will be returned to a substantially similar state upon

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~~decommissioning or abandonment of the project, unless otherwise requested by the landowner.]~~

(13) "Decommission costs" or "decommissioning costs" means the amount of all costs and expenses incurred in connection with the ~~decommissioning[decommissioning]~~ ~~dismantlement, removal, and disposal of structures, systems, and components] of a merchant electric generating facility [at the time of decommissioning]~~ pursuant to KRS 278.706.

(14) "Decommission plan" or "decommissioning plan" means a plan to retire physical facilities of a merchant electric generating facility, pursuant to KRS 278.706.

(15) "Disposal" is defined by KRS 224.1-010(9).

(16) "Facility" is defined by KRS 278.010(11).

(17) "Hazardous substance" is defined by KRS 224.1-400(1)(a).

(18) "Land disposal" is defined by KRS 224.1-010(42).

(19) "Landowner" means a person who has legal ownership of land where a merchant electric generating facility is located.

(20) "Megawatt" means a unit of power equal to one (1) million watts, measure of output of electrical power.

(21) "Merchant electric generating facility" is defined by KRS 278.700(2).

(22) "Mitigation measures" means an act or requirement established by the siting board pursuant to KRS 278.708.

(23) "Modification" means a change in existing order or certificate, necessary to cure an error.

(24) "Monitoring" ~~means[is defined as]~~ the act of systematically inspecting and collecting data on operational parameters or on the quality of a merchant electric generating facility.

(25) "Municipal government" means a city, town, or other local authority with an elected governing body.

(26) "Net present value" means the difference between the present value inflow and outflow over a period of time and pursuant to KRS 278.706(2).

(27) "Ordinance" means an official written act of a local government, the effect of which is general and permanent in nature, which is enforceable by the enacting local government as a local law within its jurisdiction.

(28) ~~["Owner-operator" is defined as any person who owns a merchant electric generating facility or is responsible for overall operation of a merchant electric generating facility, including any contractor conducting operational activities.]~~

~~[(29)]~~ "Person" is defined by KRS 278.700(3).

~~[(29)](30)~~ "Professional engineer" is defined by KRS 322.010(3) ~~and licensed pursuant to KRS 322.040; an independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be experienced] to engage in the decommissioning of solar electric generating facilities.~~

~~[(30)](31)~~ "Recycling" is defined by KRS 224.1-010(21).

~~[(31)](32)~~ "Secretary" is defined by KRS 224.1-010(23).

~~[(32)](33)~~ "Service" is defined by KRS 278.010(13)[278.700].

~~[(33)](34)~~ "Solar panel" means a panel or device containing photovoltaic cells designed to absorb and convert sunlight into a source of generating electricity.

~~[(34)](35)~~ "Successor" means one who succeeds to the rights to own or control a merchant electric generating facility.

~~[(35)](36)~~ "Useful life" means the estimated length of time that depreciable property will generate income.

~~[(36)](37)~~ "Waste" is defined by KRS 224.1-010(30).

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 103 shall have the meaning ~~[as identified in Table 1 of this section]~~ [administrative regulation].

Table 1. Acronyms and Abbreviations	
KAR	Kentucky Administrative Regulations
KRS	Kentucky Revised Statutes
MEGF	Merchant Electric Generating Facility
MW	Megawatt

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ENERGY AND ENVIRONMENTAL CABINET  
Department for Environmental Protection  
Division of Waste Management  
(As Amended at ARRS, March 11, 2024)

401 KAR 103:010. Notification and transfer procedures for merchant electric generating facilities.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, ~~224.99-010, 278.700 - 278.716~~

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, ~~[224.43-345, ]~~278.710(3) ~~-, (4), ]~~ (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285(2) requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation ~~established[set for]~~ in KRS 278.710(3) ~~through[, (4), ]~~ (5) ~~and[, ]~~ (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations ~~established[set forth]~~ in KRS 278.710(3) ~~through[, (4), ]~~ (5) ~~and[, ]~~ (7) through (10). This administrative regulation establishes procedures for requirements concerning notifications, transfers of ownership, annual fees, and reporting pertaining to merchant electric generating facilities.

Section 1. Notification Procedures. ~~[An applicant or person who has received]~~ A construction certificate holder of ~~for~~ a merchant electric generating facility shall:

(1) File with the cabinet, and completed and notarized MEGF Construction-Operating Notification Form, DWM 4658, on or prior to the date upon which:

- (a) Construction commences or is complete;
- (b) Generation of electricity for sale begins;
- (c) Permanent cessation of electric generation;
- (d) Start of decommissioning plan implementation; and
- (e) Facility ceases construction or generation for thirty (30) consecutive days after the MEGF commencement of construction ~~;~~ ]

(2) ~~For a [MEGF that received a]~~ construction certificate received by an MEGF prior to June 29, 2023, shall comply with the/be subject to requirements of subsection one (1) of this section. The notice shall be submitted no later than July 15, 2024; and ten (10) days after these administrative regulations take effect.]

(3) Provide all filings pursuant to ~~[Section 3 of ]~~ KRS 278.710(3).

Section 2. Ownership Transfer Procedures.

(1) The applicant and construction certificate holder or person who controls or owns the right to control the MEGF ~~[existing owner-operator]~~ shall file a completed and notarized] ~~the]~~ MEGF Notice of Ownership Transfer Form, DW4652, including all required attachments, to provide notice to the cabinet of any pending or final transaction pursuant to KRS 278.710(3)(d) no later than ten (10) days prior to completing the transaction.

(2) Pursuant to KRS 278.710, upon transfer or sale of ownership, control, or the right to control the MEGF, a successor shall submit an updated or revised copy of the decommissioning plan, if applicable, pursuant to KRS 278.710(8).

(3) Transfer pursuant to KRS 278.710 shall not cause a lapse in financial assurance for the approved decommissioning plan.

(a) If the existing financial assurance previously filed with the cabinet pursuant to KRS 278.710 will continue to secure the approved decommissioning plan after transfer occurs, the ~~[applicant and]~~ successor and construction certificate holder or



person who controls or owns the right to control the MEGF shall jointly execute a certification of financial assurance ~~indicated~~~~denoted~~ on the form in subsection (1) of this section; or

(b) Tender a proposed replacement financial assurance pursuant to 401 KAR 103:030, the existing financial assurance.

(4) ~~The annual fees established in~~~~[A check, money order, or electronic funds transfer for annual fees in accordance with]~~ Section 4 of this administrative regulation ~~shall be,~~ made payable to the Kentucky State Treasurer ~~by check, money order, or electronic funds transfer.~~

(5)

(a) The construction certificate holder~~[owner-operator]~~ shall remain responsible for obligations pursuant to the construction certificate and decommissioning plan until the cabinet deems that ~~both~~ the ~~[owner-operators and successors]~~ MEGF Notice of Ownership Transfer Form, DW4652, including all required attachments, submitted pursuant to subsections (1) and (2) of this section are complete and any replacement financial assurance is deemed adequate to cover decommissioning cost.

(b) The cabinet shall have sixty (60) days to review and accept all submissions required of this section.

(c)

1. If the cabinet determines that any submissions required of this section are deficient, pursuant to KRS 278.710(3), (4), and (7), the cabinet~~[it]~~ shall send the applicant and construction certificate holder~~[owner-operator and successor]~~ a written notice stating~~[describing]~~ the deficiencies and stating the transfer is not accepted as complete, pursuant to KRS 278.710(5); and

2. The applicant and construction certificate holder~~[owner-operator and successor]~~ shall have thirty (30) calendar days from the date the cabinet issues a written deficiency to respond with information that will cure the deficiency. Failure to respond to the notice of deficiency shall be grounds for the cabinet to withhold the existing~~[original]~~ financial assurance until the deficiency is addressed and accepted by the cabinet.

3. The deadline established~~[timetable specified]~~ in paragraph (b) of this subsection shall toll from the date the cabinet issues a written notice of deficiency pursuant to subparagraph 1. of this paragraph until the applicant and construction certificate holder~~[owner-operator and successor]~~ submit a response required by subparagraph 2. of this paragraph.

Section 3. Decommissioning Notification.

(1) Upon permanent cessation of the generation of electricity, the construction certificate holder, or~~[owner-operator]~~ person who controls or owns the right to control the MEGF shall file a completed and notarized MEGF Construction-Operating Notification Form, DWM 4658, notifying the cabinet within thirty (30) days of cessation. This notification shall serve as the start date for decommissioning to begin.

(2) Pursuant to KRS 224.10-285(1)~~[401 KAR 30:020(2)]~~, unless a written request is submitted to the cabinet, failure to fully implement the decommissioning plan within eighteen (18) months shall constitute~~will be considered~~ abandonment.

Section 4. Annual Fee.

(1) Fees collected pursuant to this section shall be used for administrative, compliance, and enforcement purposes as established in 401 KAR Chapter 103~~[specified in this Chapter]~~ and ~~in~~ KRS 224.10-285.

(2) The cabinet ~~shall~~~~will~~ provide the construction certificate holder or person who controls or owns the right to control the MEGF~~[applicant]~~ with the MEGF Annual Fee Form, DWM 4656.

(a) The construction certificate holder or person who controls or owns the right to control the MEGF shall submit a fee amount of \$6,000 no later than May 31 of each year for each MEGF in operation or decommissioning status.~~[Based on the manufacturer's nameplate-rated capacity in the approved construction certificate, the annual fee is established pursuant to the table in paragraph (b) of this subsection.]~~

(b)

<u>[MEGF Generating Capacity]</u>	<u>[Annual Fee]</u>
<u>[≥10 MW up to and including 75 MW]</u>	<u>[\$4,000]</u>
<u>[&gt;75 MW up to and including 150 MW]</u>	<u>[\$8,000]</u>
<u>[&gt;150 MW]</u>	<u>[\$12,000]</u>

~~[(c)]~~ If the construction certificate holder~~[owner-operator]~~ or person who controls or owns the right to control fails to submit the annual fee required, ~~[may be subject to]~~ civil penalties may apply and, if applied, shall be pursuant to KRS 224.99-010~~(16)~~.

~~(3)~~ ~~[The owner-operator, or person who controls or owns the right to control the MEGF shall submit the annual fee no later than May 31 of each year for each MEGF in operation or decommissioning status.]~~

~~[(4)]~~

~~(a)~~ The construction certificate holder~~[applicant, owner-operator]~~, or person who controls or owns the right to control the MEGF may request an extension to the annual fee deadline.

~~(b)~~ The extension request shall be in writing stating the reasons therefore, and shall be received by the Solid Waste Branch of the Division of Waste Management ten (10) days prior to the deadline.

~~(c)~~ ~~[If granted,]~~ The extension shall not exceed thirty (30) days.

Section 5. Reports. The construction certificate holder~~[owner-operator]~~ or person who controls or owns the right to control the MEGF shall submit an annual report for a recordkeeping and reporting system. ~~[The annual report shall meet the following requirements:]~~

(1) The MEGF shall submit the annual report to the cabinet, no later than the first anniversary of commencement of construction and every year thereafter no later than May 31. The report shall be submitted with the completed and notarized Merchant Electric Generating Facility Annual Report or Decommissioning Plan Update Form, DWM 4657, including all required attachments, and shall contain ~~the following~~:

- (a) A description of construction activities during the year;
- (b) A description of compliance with mitigation measures;
- (c) A description of operation maintenance activities;
- (d) The date and quantity of system components taken out of service;
- (e) The date of when and where system components disposed or recycled; and
- (f) The quantity of system components disposed or recycled.

(2) The annual report shall be certified by the construction certificate holder~~[owner-operator]~~, ensuring the MEGF is in compliance with all mitigation measures and requirements included~~[outlined]~~ in the construction certificate and decommissioning plan.

(3) The construction certificate holder~~[owner-operator]~~, or person who controls or owns the right to control the MEGF shall retain records of all required monitoring information, mitigation measures, copies of site assessment reports and annual reports, and records of all data used to complete the application for the construction certificate and decommissioning plan updates, for a period of at least three (3) years from the date of the sample, measurement, report, certification, or application. ~~[This period may be extended by request of the cabinet at any time.]~~

(4) The construction certificate holder~~[owner-operator]~~, or person who controls or owns the right to control the MEGF shall keep records of the source, approved disposal location, and quantity of any release of a hazardous substance, pollutant or contaminant, or a waste that is listed or characterized as hazardous pursuant to KRS 224.1-400 and 401 KAR Chapter 39. These records shall be available for cabinet inspection.

(5) Failure by a construction certificate holder~~[Owners-operators]~~, or person who controls~~[persons who control]~~ or own the right to control a merchant electric generating facility, ~~[who fail]~~ to meet the requirements established in this administrative regulation shall be grounds for~~[may be subject to]~~ penalties established in KRS 224.99-010~~(16)~~.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "MEGF Construction-Operating Notification[~~"] Form", DWM 4658, March~~January~~ 2024;~~[September 2023].~~~~
- (b) "MEGF Notice of Ownership Transfer", form, DW4652, January 2024~~[September 2023].~~
- (c) "MEGF Annual Report or Decommissioning Plan Update" Form, DWM 4657, January 2024~~[September 2023]~~; and
- (d) "MEGF Annual Fee" Form, DWM 4656, January 2024~~[September 2023].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at [eec.ky.gov/environmental-protection/waste](http://eec.ky.gov/environmental-protection/waste).

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CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email [Tyler.Shields@ky.gov](mailto:Tyler.Shields@ky.gov).

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Environmental Protection**  
**Division of Waste Management**  
**(As Amended at ARRS, March 11, 2024)**

**401 KAR 103:020. Decommissioning standards.**

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, ~~224.43-345, 278.710(3) [ (4), ]~~ (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285(2) requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation ~~established~~~~[set for]~~ in KRS 278.710(3) ~~through [ (4), ]~~ (5) ~~and [ ]~~ (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations ~~established~~~~[set forth]~~ in KRS 278.710(3) ~~through [ (4), ]~~ (5) ~~and [ ]~~ (7) through (10). This administrative regulation establishes procedures ~~pertaining to merchant electric generating facilities~~ for decommissioning plan technical requirements, decommissioning plan updates, decommissioning cost estimate updates, and cases of abandonment.

Section 1. Technical Requirements of Decommissioning Plan.

The ~~construction certificate holder~~~~[owner-operator,]~~ or person who controls or owns right to control any MEGF ~~shall comply with [are subject to]~~ decommissioning requirements and mitigation measures ~~established~~~~[outlined]~~ in KRS ~~278.706 and 278.704 through~~ 278.710.

(1) This plan shall be certified by an independent professional engineer prior to submission to the cabinet.

(2) Unless otherwise stated in an accommodation ~~included~~~~[contained within]~~ a lease agreement with the affected landowner, the decommissioning plan shall be designed to return the land to a substantially similar state as it was prior to the commencement of construction.

(3) Decommissioning plans filed with the cabinet shall ~~minimally~~ meet the following technical requirements:

- (a) Provide an estimated lifespan of the MEGF, including an estimated period of useful life for system components;
- (b) Identify the party responsible for decommissioning;

(c) Define conditions upon which decommissioning will be ~~implemented~~~~[initiated]~~, including a statement defining how notification will be made ~~to the cabinet, affected landowners, and local county or municipality in regard to implementation of [intent to start]~~ the decommissioning process, ~~pursuant to 401 KAR 103:010, Section 1(1)~~~~[103:010(1)]~~;

(d) The ~~estimated~~ timeframe for commencement and completion of decommissioning activities;

(e) Include a revegetation plan, with native seed mixes, excluding any invasive species;

(f) Cost itemization of all estimated costs that factor into decommissioning the MEGF;

(g) Include the financial assurance mechanisms, in accordance with KRS 278.706 and 401 KAR 103:030;

(h) Describe any agreement with landowners regarding decommissioning, including any special accommodations made to any affected landowner, ~~pursuant to KRS 278.706(2)(m)6; [ ]~~

~~[1.] [Incorporate the accommodations as requirements into the lease agreement with landowners and the decommissioning plan; or]~~

~~[2.] [Deny the request to accommodate and submit a detailed correspondence to the landowner, county or municipal government, and cabinet.]~~

~~[3.] [The owner-operator or person who controls or owns the right to control shall provide the landowner, county or municipal government, and cabinet with a timeline of any agreed upon accommodated request from the landowner or county or municipal government in accordance with paragraph (h) of this subsection.]~~

(i) Removal of any MEGF owned equipment and facilities, including:

1. Structures;
2. Fencing;
3. Roads;
4. Foundations or pads;
5. Erosion, sediment, and water control measures;
6. Modules or solar panels;
7. Racks;
8. Cables or wires;
9. Conduit;
10. Inverters; and
11. Transformers; ~~[ ]~~

(j) Remove any underground components and foundations of above-ground facilities. Underground components and facilities under this paragraph shall be removed to a depth of three (3) feet below the surface grade of the land in or on which the component was installed, ~~unless otherwise requested by the landowner; and~~ ~~(k) Incorporate the requirements of paragraphs (a) through (i) of this subsection into the applicant's or construction certificate holder's leases with landowners.~~

Section 2. Decommissioning Plan Updates.

(1) Pursuant to KRS 278.710, all MEGFs shall submit an updated decommissioning plan at least once every five (5) years. Decommissioning plan updates shall be submitted no later than 180 days prior to the fifth anniversary of the commencement of generation of electricity unless permission for a later date has been granted in writing by the cabinet, ~~as established in KRS 278.710(8)~~. The cabinet may, at any time, request updated information necessary for reevaluating the decommissioning plan updates. Requests for updates shall include:

- (a) Additional construction of equipment or facilities;
- (b) Removal of equipment or facilities; or
- (c) Changes in the facilities estimated decommissioning costs.

(2) Decommissioning plan updates shall:

(a) Be submitted in conjunction with a notarized MEGF Annual Report or Decommissioning Plan Update Form, DWM 4657, including all required attachments;

(b) Include an updated estimation of decommissioning costs in accordance with Section 3 of this administrative regulation and 401 KAR 103:030; and

(c) Include any proposed measures to mitigate adverse impacts pursuant to KRS 278.710.

(3) Any engineering evaluation procured by the cabinet or at the cabinet's request and referred to the secretary to inform a final decision shall be considered preliminary, confidential, and not open for public inspection until after final action by the secretary.

(4) Decommissioning plan updates that require new construction shall comply with~~will be subject to standards in~~ KRS 278.704 through 278.714.

(5) Upon review and approval of the updated decommissioning plan by the cabinet, the construction certificate holder~~owner-operator~~, or person who controls or owns the right to control the MEGF shall file with the cabinet an updated copy of the decommissioning bond or other similar security, in accordance with 401 KAR 103:030, to reflect changes to the estimated cost of effectuating the decommissioning plan or to the net present value or the net salvage value of the facility or its components.

Section 3. Decommissioning Cost Estimates.

(1) The construction certificate holder~~applicant, owner-operator~~, or person who controls or owns the right to control a merchant electric generating facility shall have a detailed, written estimate, in current US dollar, of the cost to decommission the MEGF in accordance with KRS 278.706 and 278.710.

(2) The estimated cost shall equal the cost of completing the decommissioning plan of the MEGF at the end of the useful life pursuant to the approved decommissioning plan. The cost estimate shall include:

(a) Itemized costs for implementing, dismantling, removing, or disposing of all structures, systems, components, and requirements established~~described~~ in Section 1 of this administrative regulation;

(b) ~~Incorporate~~ An estimated decommissioning cost per megawatt valuation;

(c) A recalculation~~Be recalculated~~ at least once every five (5) years to accommodate for inflation or depreciation;

(d) ~~The~~Include a defined useful life period of the MEGF; and

(e) Certification~~Be certified~~ by an independent, licensed engineer pursuant to KRS 278.706.

Section 4. Abandonment. In the event of abandonment or failure to complete decommissioning obligations by the responsible party, pursuant to KRS 224.10-100, the cabinet may~~will~~ draw upon the financial assurance~~decommissioning bond~~ and implement the decommissioning plan. Pursuant to KRS 278.706, if any party makes a successful claim on the approved financial assurance, that party shall be responsible for the requirements established~~set forth~~ in the decommissioning plan.

Section 5. Incorporation by Reference.

(1) "MEGF Annual Report or Decommissioning Plan Update" Form, DWM 4657, January 2024~~September 2023~~, is incorporated by reference.

(2) This material may be inspected, copies, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at [eec.ky.gov/environmental-protection/waste](http://eec.ky.gov/environmental-protection/waste).

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CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email [Tyler.Shields@ky.gov](mailto:Tyler.Shields@ky.gov).

ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Waste Management  
(As Amended at ARRS, March 11, 2024)

401 KAR 103:030. Financial requirements.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 224.99-010, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, ~~224.43-345,~~ 278.710(3) ~~-, (4),~~ (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285(2) requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation established~~set for~~ in KRS 278.710(3) through~~-, (4),~~ (5) and~~;~~ (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations established~~set forth~~ in KRS 278.710(3) through~~-, (4),~~ (5) and~~;~~ (7) through (10). KRS 224.10.100(31) authorizes the cabinet to draw upon the financial assurance for which it is named as a beneficiary and decommission a merchant generating facility in accordance with its approved decommissioning plan. This administrative regulation establishes procedures to administer the financial assurance mechanisms for the decommissioning responsibilities of merchant electric generating facilities.

Section 1. Applicability. The financial assurance criteria and requirements established in this administrative regulation shall apply to all applicants, construction certificate holders~~owner-operators~~, or person who controls or owns the right to control a merchant electric generating facility, except as established~~stated~~ in KRS 278.706 and 278.710.

Section 2. Financial Assurance Criteria.

(1) Applicants, construction certificate holders~~owners-operators~~, or person who controls or owns the right to control a merchant electric generating facility shall:

(a) Ensure that the financial assurance mechanism shall be~~mechanisms— is~~ sufficient to cover the costs of decommissioning pursuant to KRS 278.706;

(b) ~~Ensure the financial assurance mechanisms be available no later than thirty (30) days after the issuance of a cabinet demand letter.~~

~~[(c)] Complete and notarize a revised financial assurance mechanism form, in accordance with Section 3 of this administrative regulation, for the revised financial assurance mechanism; and~~

~~[(d)] Ensure that the coverage of the financial assurance mechanism shall~~does not lapse, in accordance with KRS 278.710(4); and~~;~~

~~[(e)] Meet the requirements pursuant to KRS 278.706 and 278.710.~~

(2) The applicant, construction certificate holder~~owner-operator~~, or person who controls or owns the right to control a merchant generating facility shall complete~~execute~~ and submit a notarized MEGF Performance Agreement, form DWM 4651, for decommissioning, as established in Section 3 of this administrative regulation, with one (1) or more of the financial mechanisms established in Section 3 of this administrative regulation. ~~[that satisfy the following criteria:]~~

~~[(a)] [The amount of the financial assurance provided by a single surety provider shall not exceed the limits of the most current United States Department of the Treasury's Circular 570.]~~

~~[(b)] [Upon receiving notice from the surety of the impending cancellation or lapse of the financial assurance mechanism, the cabinet shall seek agreement of any landowners who have not previously agreed pursuant to paragraph (c) below to make a demand on the financial assurance mechanism.]~~

~~[(c)] [The cabinet may seek agreement of the landowners to allow it to make a demand on the bond prior to receiving notice of impending cancellation or lapse.]~~

~~[(d)] [A landowner's agreement to allow the cabinet to make a demand on a bond pursuant to clause a. of this subparagraph may only be revoked in writing bearing a notarized signature of the landowner.]~~

~~(3) [Pursuant to Section 3 of this administrative regulation, financial assurance mechanism shall be:]~~

~~[(a)] [Submitted;]~~

~~[(b)] [Reviewed; and]~~

~~[1.] [Approved by the cabinet if the applicant, owner-operator, or person who controls or owns the right to control a merchant electric generating facility is in compliance with the requirements of this administrative regulation; or]~~

~~[2.] [Denied by the cabinet if the updated or replacing financial assurance mechanism does not meet the requirements stated KRS 278.706, 278.710, and this administrative regulation.]~~

~~[(4)] Any applicant, construction certificate holder [Applicants, owners-operators], or person who controls or owns the right to control a merchant electric generating facility who ~~fails~~fail to meet the requirements established in this section, KRS 278.706, and [KRS]278.710 may be ~~issued~~subject to penalties, which shall be as established in KRS 224.99-010.~~

Section 3. Financial Assurance Mechanisms. The mechanisms used to demonstrate financial assurance in accordance with this administrative regulation shall ensure that the funds are sufficient~~necessary~~ to meet the costs of decommissioning the merchant generating facility upon the expiration of its useful life.

(1) A financial assurance mechanism shall be:

(a) Submitted;

(b) Reviewed; and

1. Approved by the cabinet if the applicant, construction certificate holder, or person who controls or owns the right to control a merchant electric generating facility is in compliance with the requirements of KRS 278.706 and 278.710 and this administrative regulation; or

2. Denied by the cabinet if the financial assurance mechanism does not meet the requirements established in KRS 278.706 and 278.710 and this administrative regulation.

(2) Before the cabinet approves a [an updated or replacement] financial assurance mechanism, the applicant or construction certificate holder [successor] shall:

(a) Complete and submit a notarized MEGF [notarize a] Performance Agreement, form DWM 4651 [of decommissioning pursuant to paragraph (c) of this section]; and

(b) Post at least one (1) of the following financial assurance mechanisms pursuant to KRS 278.706 (2)(m)5:

1. A surety bond as established in subsection (3)(2) of this section;

2. An escrow agreement as established in subsection (4)(3) of this section; or

3. Other similar security pursuant to KRS 278.706.

~~[(c)] [A performance agreement, guaranteeing performance of decommissioning to allowable limits, shall be completed, and notarized on MEGF Performance Agreement Form, DWM 4651.]~~

~~(3)(2) A surety bond shall [:] be completed and notarized on MEGF Surety Bond Form, DWM 4653. [~~The requirements contained in the surety bond are incorporated in this administrative regulation by reference.~~]~~

~~(4)(3) An escrow agreement shall:~~

~~(a) Be completed on MEGF Escrow Agreement Form, DWM 4654; and. [~~The requirements contained in the escrow~~~~

~~agreement are incorporated in this administrative regulation by reference.~~

~~(b) If a certificate of deposit is used in conjunction with the escrow agreement, [~~it shall~~] be made payable to the financial institution as the escrow agent.~~

~~(5)(4) Other financial assurance as established [specified] in KRS 278.706 and 278.710.~~

~~(6)(5) The applicant, construction certificate holder [owner-operator], or person who controls or owns the right to control a merchant electric generating facility by establishing more than one (1) financial mechanism shall be limited to [~~the following~~]:~~

~~(a) Surety bonds;~~

~~(b) Escrow agreements;~~

~~(c) Other financial assurance, pursuant to subsection (5)(4) of this section; and~~

~~(d) A combination of mechanisms established in this administrative regulation, rather than each single mechanism, that shall provide financial assurance for an amount at least equal to the financial assurance requirements established in KRS 278.706.~~

~~(7) If the cabinet receives notice from the financial guarantor of the impending cancellation or lapse of the financial assurance mechanism, the cabinet may seek agreement of any landowners who have not previously agreed pursuant to subsection (8) of this section, to make a demand on the financial assurance mechanism. A landowner's agreement to allow the cabinet to make a demand on a financial assurance mechanism shall only be revoked with a notarized signature of the landowner.~~

~~(8) Pursuant to KRS 224.10-100(31), the cabinet may seek an agreement with the landowner to allow the cabinet to make a demand on the financial assurance mechanism prior to receiving notice of impending cancellation. If the cabinet makes a demand on the financial assurance mechanism, the construction certificate holder or person who controls or owns the right to control the facility shall ensure that the financial assurance mechanism shall be available no later than thirty (30) days after issuance of the demand letter.~~

Section 4. Release of Financial Assurance.

(1) Financial assurance mechanisms posted to assure the proper decommissioning of the MEGF shall be released by the cabinet ~~if~~when the construction certificate holder [owner-operator], or person who controls or owns the right to control the MEGF demonstrates to the satisfaction of the cabinet that all decommissioning requirements pursuant to the decommissioning plan are complete in conformance with KRS 278.706 and [;] 278.710 [;] and 401 KAR 103:020.

(2) To demonstrate that all decommissioning requirements have been satisfied, the construction certificate holder [owner-operator], or person who controls or owns the right to control the MEGF shall submit an assessment report certifying the facility is fully decommissioned pursuant to subsection (1) of this section.

Section 5. Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "MEGF Performance Agreement" Form, DWM 4651, ~~January 2024~~ [September 2023];

(b) "MEGF Surety Bond" Form, DWM 4653, ~~January 2024~~ [September 2023]; and

(c) "MEGF Escrow Agreement" Form, DWM 4654, ~~January 2024~~ [September 2023].

(2) This material may be inspected, copies, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at [eec.ky.gov/environmental-protection/waste](http://eec.ky.gov/environmental-protection/waste).

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CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email [Tyler.Shields@ky.gov](mailto:Tyler.Shields@ky.gov).

VOLUME 50, NUMBER 10 – APRIL 1, 2024

**TRANSPORTATION CABINET**  
Department of Vehicle Regulation  
Division of Drivers Licensing  
(As Amended at ARRS, March 11, 2024)

**601 KAR 012:080. Drivers license or personal ID renewal or replacement for persons without an established and fixed nighttime residence.**

RELATES TO: KRS 186.412, 186.4122, 42 U.S.C. 11434a(2)

STATUTORY AUTHORITY: KRS 186.412, 186.4122

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.412 establishes procedures to allow applicants seeking to renew or obtain a duplicate operator's license when the applicant does not have an established and fixed nighttime residence. KRS 186.4122 establishes procedures for an applicant seeking an initial, renewal, or duplicate personal identification card when the applicant does not have an established and fixed nighttime residence. KRS 186.412 requires the Transportation Cabinet to promulgate administrative regulations establishing forms relating to both personal driver's licenses and personal identification cards.

Section 1. Definitions.

(1) "Homeless individual" means a person at least eighteen (18) years of age who lacks a fixed, regular, and nighttime residence.

(2) "Homeless youth" is defined by 42 U.S.C. § 11434a(2) and KRS 186.4122.

Section 2. Procedures for Renewing an Operator's License, Duplicate Operator's License, or Personal Identification Card.

(1) All applicants who meet the definition of homeless individual shall complete form TC 94-199 to renew an operator's license, receive a duplicate operator's license, or to receive an initial, renewal, or duplicate personal identification card. This form shall not be used for issuance of an initial operator's license.

(2) All applicants who meet the definition of homeless youth and who are between the ages of sixteen (16) and seventeen (17) years old but younger than eighteen (18) years of age, shall complete form TC94-198 to receive a personal identification card.

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "TC94-198", October 2023; and

(b) "TC94-199", September 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Driver Licensing, 2nd Floor, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on Transportation Cabinet's Web site at [https://transportation.ky.gov/Organizational-Resources/Pages/Forms-Library-\(TC-94\).aspx](https://transportation.ky.gov/Organizational-Resources/Pages/Forms-Library-(TC-94).aspx).

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CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 782-8180, fax (502) 564-5238, email [Jon.Johnson@ky.gov](mailto:Jon.Johnson@ky.gov).

**CABINET FOR HEALTH AND FAMILY SERVICES**  
Office of Inspector General  
Division of Certificate of Need  
(As Amended at the Senate Standing Committee on Health Services on March 21, 2024 and at the House Standing Committee on Health Services on March 14, 2024)

**900 KAR 5:020. State Health Plan for facilities and services.**

RELATES TO: KRS 216B.010-216B.130, **216B.178**

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference.

(1) The "~~2023~~[~~2022~~] Update to the State Health Plan", ~~March~~[~~February~~] **2024**[~~July~~][~~March~~][~~2023~~][July 2022], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
Department for Medicaid Services  
Division of Fiscal Management  
(As Amended at ARRS, March 11, 2024)

**907 KAR 1:061. Payments for ambulance transportation.**

RELATES TO: KRS 205.520, 205.8451, 42 C.F.R. 440.170, 447.200 -447.205, 42 U.S.C. 1396, 2005 Acts ch. 173 Parts I., A.22.(i), I., H.3.b.(19)

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 responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the

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Department for Medicaid Services for ambulance transportation services.

Section 1. Definitions.

(1) "Advanced life support (ALS) emergency ambulance transportation" means an ambulance service meeting the standards for advanced life support services established in accordance with 202 KAR 7:501.

(2) "Advanced Life Support (ALS) Medical First Response Provider" means an emergency medical professional licensed in accordance with 202 KAR 7:501 to provide ALS care.

(3) "Air ambulance provider" means an air ambulance service licensed in accordance with 202 KAR 7:510.

(4) "Appropriate medical facility or provider" means a local medical provider other than an emergency room of a hospital who can provide necessary emergency care if a hospital emergency room is not located within a recipient's county of residence or a contiguous county.

(5) "Basic life support (BLS) emergency ambulance transportation" means an ambulance service which meets the standards for basic life support services established in 202 KAR 7:501.

(6) "Department" means the Department for Medicaid Services or its designated agent.

(7) "Membership or subscription fee" means a payment collected from a recipient by a provider which entitles the recipient to free or discounted ambulance transportation services.

(8) "Recipient" is defined in KRS 205.8451(9).

(9) "Upper limit" means the maximum reimbursement rate the department shall pay an ambulance transportation provider for the service provided.

Section 2. Reimbursement for Licensed Ambulance Services.

(1) The department shall reimburse an ambulance service at the lesser of:

(a) The provider's usual and customary charge for the service; or

(b) An upper limit established in this section for the service plus, if applicable, a rate for oxygen and reimbursement for disposable medical supplies utilized during an ambulance transportation service.

(2) Except for an air ambulance transportation service, the upper limit for an ambulance service shall be calculated by adding a base rate, mileage allowance, and flat rate fees as follows:

(a) For ALS emergency ambulance transportation to the emergency room of a hospital:

1. A base rate of 110 dollars;
2. A mileage allowance of four (4) dollars per mile; and
3. If transported concurrently, a flat rate of twenty-five (25) dollars for an additional recipient;

(b) For BLS emergency ambulance transportation to the emergency room of a hospital:

1. A base rate of eighty-two (82) dollars and fifty (50) cents;
2. A mileage allowance of three (3) dollars per mile; and
3. If transported concurrently, a flat rate of twenty (20) dollars for an additional recipient;

(c) For ALS or BLS emergency ambulance transportation to an appropriate medical facility or provider:

1. A base rate of sixty (60) dollars;
2. A mileage allowance of two (2) dollars and fifty (50) cents per mile; and
3. If transported concurrently, a flat rate of fifteen (15) dollars for an additional recipient;

(d) For BLS emergency ambulance transportation to the emergency room of a hospital during which the services of an ALS Medical First Response provider are required to stabilize the recipient:

1. A base rate of 110 dollars;
2. A mileage allowance of four (4) dollars per mile; and
3. If transported concurrently, a flat rate of twenty-five (25) dollars for an additional recipient;

(e) For BLS emergency ambulance transportation to an appropriate medical facility or provider during which the services of an ALS Medical First Response provider are required:

1. A base rate of sixty (60) dollars;
2. A mileage allowance of two (2) dollars and fifty (50) cents per mile; and
3. If transported concurrently, a flat rate of fifteen (15) dollars for an additional recipient; ~~and~~

(f) For non emergency ambulance transportation during which the recipient requires no medical care during transport:

1. A base rate of fifty-five (55) dollars; and
2. A mileage allowance of two (2) dollars per mile; ~~and~~

(g) For a treatment in place encounter during which the recipient receives care but is not transported to a medical facility:

1. A base rate of at least eighty-two (82) dollars and fifty (50) cents and as consistent with the Kentucky Medicaid Transportation Fee Schedule at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> [Healthcare Common Procedure Coding System (HCPCS) code A0998 at the Kentucky Medicaid Transportation Fee Schedule rate for code A0249 (BLS base, hospital)]; and

2. Mileage shall not be billable; ~~and~~

(h) For a treatment, triage, and transport service during which the recipient receives care, is assessed as not needing emergent treatment, and is transported to an appropriate medical facility that is not a hospital emergency department:

1. A base rate of at least eighty-two (82) dollars and fifty (50) cents and as consistent with the Kentucky Medicaid Transportation Fee Schedule at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> [Healthcare Common Procedure Coding System (HCPCS) code A0998 at the Kentucky Medicaid Transportation Fee Schedule rate for code A0249 (BLS base, hospital)]; and

2. A mileage allowance of two (2) dollars and fifty (50) cents per mile; ~~and~~

(i) The rates in this subsection may be increased as consistent with the Kentucky Medicaid Transportation Fee Schedule at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

(3) In addition to the rates specified in subsection (2) of this section, the department shall reimburse for:

(a) The administration of oxygen during an ambulance transportation service at a flat rate of ten (10) dollars per one (1) way trip if medically necessary; and

(b) The cost of disposable supplies actually utilized during an ambulance transportation service if the provider lists the supplies used during the service on an invoice. The department shall not reimburse for a supply item that is not disposable or is not actually used during the ambulance transportation service.

(4) Reimbursement for air ambulance transportation shall be an all inclusive rate which shall be the lesser of:

- (a) The provider's usual and customary charge; or
- (b) An upper limit of \$3,500 per one (1) way trip or as increased consistent with the Kentucky Medicaid Transportation Fee Schedule at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

(5) Payment for a service identified in subsections (2) through (4) of this section shall be contingent upon a statement of medical necessity, which:

(a) Shall be maintained in accordance with 907 KAR 1:060, Section 5(2); and

(b) May be requested by the department for post-payment review.

(6) If a recipient has paid a membership or subscription fee to a transportation provider, the provider shall not be eligible for Medicaid reimbursement for service provided to the recipient.

Section 3. Appeal Rights.

(1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 4. Federal Approval and Federal Financial Participation. The cabinet's coverage and reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as relevant.

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**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Aging and Independent Living  
Division of Aging and Physical Disabilities  
(As Amended at ARRS, March 11, 2024)**

**910 KAR 1:170. Older Americans Act supportive services for the elderly.**

RELATES TO: KRS 194A.060, 205.201, 205.203, 205.455-205.460[205-465], 314.011, 5 U.S.C. 552, 42 U.S.C. 3001 et seq., 45 C.F.R. 85.42-85.43

STATUTORY AUTHORITY: KRS 194A.050, 205.204(2)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050 requires the secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Health and Family Services as the state agency to administer the Older Americans Act in Kentucky. This administrative regulation establishes the standards of operation for the Supportive Services Program in Kentucky.

Section 1. Definitions.

(1) "Access" means information and referral services, outreach service and transportation service.

(2) "Agency" means the area agency on aging, an entity designated by the state to administer, at the local level, the programs funded by the Older Americans Act of 1965, as amended.

(3) "Assessment" means the collection and evaluation of information about a person's situation and functioning to determine the applicant or recipient service level and development of a plan of care utilizing a holistic, person centered approach by a case manager[qualified independent care coordinator (ICG)].

(4) "Assisted transportation" means a one-way trip to accompany an eligible person who requires assistance for safety or protection to or from his or her physician, dentist, or other necessary service.

(5) "Case management" means a process, coordinated by a case manager, for linking a client to appropriate, comprehensive, and timely home or community based services as identified in the plan of care by:

- (a) Planning;
- (b) Referring;
- (c) Monitoring;
- (d) Advocating; and
- (e) Following the timeline of the assessment agency to obtain:
  1. Service level; and
  2. Development of the plan of care.

(6) "Case management supervisor" means an individual meeting the requirements of Section 5(1) and (2) of this administrative regulation and who has[shall have] four (4) years or more experience as a case manager.

(7) "Case manager" means the individual employee, meeting the requirements of Section 5 of this administrative regulation, and who is responsible for case management including:

(a) Coordinating services and supports from all agencies involved in providing services required by the plan of care;

(b) Completing the initial assessment, plan of care, and annual reassessment;

(c)[(b)] Ensuring that all service providers have a working knowledge of the plan of care; and

(d)[(c)] Ensuring that services are delivered as required.

(8) "Community" means a county designated as either urban or rural in accordance with the most current percentage of population listing from the U.S. Census Bureau.

(9) "District" is defined by KRS 205.455(4).

(10) "Educational or experiential equivalent" means:

(a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and

(b) At least 400 documented hours of experience assisting aging or disabled individuals through:

1. Practicum placement;
2. Clinicals; or
3. Volunteerism.

(11) "Home modification" means the provision of minor home adaptations, additions, or modifications to enable the elderly to live independently or safely or to facilitate mobility, including emergency summons systems.

(12) [~~"Independent care coordinator" or "ICC" means the individual that completes the initial assessment, plan of care, and reassessment.~~]

[(13)] "Information and assistance" means a service for individuals that provides current information about services available within the community.

[(13)][(14)] "In-home services" means the performance of heavy housecleaning, yard tasks, and other activities needed to assist a functionally impaired elderly person remain in his or her own home.

[(14)][(15)] "Legal assistance" means:

(a) Legal advice and representation by an attorney; or  
(b) Counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney.

[(15)][(16)] "Multipurpose senior center" is defined by 42 U.S.C. 3002(36).

[(16)][(17)] "Natural supports" means a non-paid person or community resource who can provide, or has historically provided, assistance to the consumer or, due to the familial relationship, would be expected to provide assistance when capable.

[(17)][(18)] "OAA" means the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., as amended.

[(18)][(19)] "Outreach" means interventions with individuals initiated by an agency or organization for the purpose of identifying potential clients or their caregivers and encouraging their use of existing services and benefits.

[(19)][(20)] "Planning and service area" is defined by 42 U.S.C.3002 ~~(43)~~[(42)].

[(20)][(21)] "Rural" means a community with less than 50,000 population as designated by the most current listing from the U.S. Census Bureau.

[(21)][(22)] "Satellite senior center" means a facility that is used to provide services specified in Section 10(3) of this administrative regulation if a multipurpose senior center is not available to provide the services.

[(22)][(23)] "Senior center services" means the provision of activities that foster the health or social well-being of individuals through social interaction and leisure.

[(23)][(24)] "Service level" means the minimum contact required through face-to-face visits and telephone calls by the case manager or social service assistant.

[(24)][(25)] "Social service assistant" means an individual who:

- (a) Has at least a high school diploma or equivalent;
- (b) Works directly under the direction of the case management supervisor;
- (c) Assists the case manager with record keeping, filing, data entry, and phone calls;
- (d) Helps determine what type of assistance a client needs;

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(e) Assists the client in getting services to carry out the plan of care;

(f) Coordinates services provided to the client;

(g) Assists a client in applying for other services or benefits for which he may qualify; and

(h) Monitors a client to ensure services are provided appropriately.

~~(25)~~~~(26)~~ "Supportive service provider" means an entity that provides supportive services funded by the OAA under an approved area plan.

~~(26)~~~~(27)~~ "Telephone reassurance" means providing a wellness check by phone with the agreement of the individual.

~~(27)~~~~(28)~~ "Transportation" means transporting an individual from one (1) location to another.

~~(28)~~~~(29)~~ "Unit of service" means one (1):

(a) Hour of direct contact with or on behalf of the participant;

(b) Contact for the information and referral service;

(c) Call for the telephone reassurance service;

(d) Contact for the outreach service;

(e) One-way trip for the transportation service; and

(f) Contact for senior center service.

~~(29)~~~~(30)~~ "Urban" means a community with 50,000 or more population as designated by the most current listing from the U.S. Census Bureau.

Section 2. Eligibility.

(1) Participants receiving supportive services funded by the OAA shall be sixty (60) years of age or older.

(2) Agencies shall utilize the DAIL-GA-01 Priority Screening Tool for prioritizing applicants to ensure services are targeted to those in greatest need.

(3) Means tests shall not be allowed to determine eligibility.

Section 3. Service Provider Responsibilities.

(1) A supportive service provider contracting with a district to provide supportive services supported in whole or in part from funds received from the cabinet shall:

(a) Provide services in accordance with the approved agency area plan which shall ensure the provision of supportive services throughout the geographic area covered under its plan, and shall not supplant the natural supports;

(b) Review the provision of supportive services to assure safety and consistency;

(c) Treat the client in a respectful and dignified manner and involve the client and caregiver in the delivery of services;

(d) Authorize/Permit staff of the cabinet and the district to monitor and evaluate services provided;

(e) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the department;

(f) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;

(g) Develop and maintain written personnel policies and a wage scale for each job classification;

(h) Designate a supervisor to assure that staff providing in-home services are provided supervision;

(i) Monitor, evaluate, and conduct satisfaction surveys; and

(j) Maintain a record for each client including:

1. Participant name;

2. Address;

3. Phone number;

4. Emergency contact information;

5. Request for services;

6. Verification of eligibility;

7. Services provided; and

8. Monitoring of services provided.

(2) Staff of the provider agency shall not:

(a) Accept personal gratuities from participants or vendors; ~~or~~

(b) Be involved in any client financial transaction without prior approval from the contracting agency; or

(c) Have a familiar relationship to any individual or company referred or hired to perform home modifications unless:

1. The individual or company is the provider of last resort;

2. A written justification is provided; and

3. The request is approved by DAIL.

(3) A procedure shall be utilized annually for the evaluation of unmet need, the results to be made available to the agency.

(4) The legal assistance provider shall:

(a) Specify how it intends to target services for the needs of low-income minority individuals;

(b) Attempt to provide services to the population of low-income minority individuals in at least the same proportion as the population bears to the older population as a whole;

(c) Provide individual legal casework, legal referral, and legal education to the elderly and training for attorneys in areas of law relevant to the elderly;

(d) Contact institutionalized elderly and inform and educate these individuals about the legal assistance services available;

(e) Specify how it intends to coordinate its efforts with the efforts of the Long-term Care Ombudsman Office;

(f) Meet at least annually with the local ombudsman program;

(g) Submit a written quarterly activities report to the agency, documenting the legal activities and services provided to participants; and

(h) Not divulge information protected by the attorney-client privilege.

Section 4. Support Services. Services funded by the OAA and administered by the area agencies on aging and independent living shall be provided as established in this section.

(1) Except for senior center and access services, the case manager~~[ICC]~~ and the individual shall determine the service needs of the individual.

(2) Information and assistance services shall:

(a) Provide information in response to an inquiry regarding opportunities and services available;

(b) Assist in accessing opportunities and services;

(c) Follow-up to determine whether services were received and identified needs were met; and

(d) Utilize current records of appropriate community resources, including local procedures for assessing participant needs and for making referrals to appropriate agencies.

(3) Legal assistance services shall:

(a) Be available for institutionalized older persons and other elderly persons otherwise entitled to legal assistance;

(b) Not be denied because of a person's failure to disclose information about income or resources; and

(c) Assure providers maintain records to include individual client services and group activities, covering topics, presenters, locations, and numbers of participants.

(4) Outreach services shall:

(a) Locate or reestablish contact initiated by providers, to identify participants in need of services;

(b) Provide information;

(c) Encourage the use of existing services;

(d) Be provided in the total geographic area served by the agency, in accordance with a plan to identify the elderly and caregivers in the area, with priority given to a rural, low income minority, limited English speaking, or disabled individual; and

(e) Be provided by a worker with current knowledge of services available to the elderly, caregivers, and individuals with disabilities in accordance with an established procedure for worker assistance to the participant in accessing appropriate services, including follow-up to assure needs have been met.

(5) Senior center services shall provide activities which foster the health or social well-being of an individual through social interaction and the use of leisure time.

(6) OAA Title IIIB allocation shall be provided:

(a) By staff who are knowledgeable and skilled in the services provided, including a volunteer under the supervision of the center director; and

(b) With consideration for the physical and mental conditions and activity preferences of a participant.

(7) Telephone reassurance services shall:

(a) Provide regular telephone contact to or from isolated individuals;



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(b) Be provided by a staff who is knowledgeable and skilled in the services provided, including a volunteer under the supervision of the center director;

(c) Include a prearranged schedule for contacting the participant;

(d) Maintain a log of calls documenting:

1. Date of the contact;
2. Length of the call;
3. Summary of the contact;
4. Demographics of the participant;
5. Determination of safety and well-being; and
6. Determination of special assistance needed;

(e) Establish a procedure to be implemented in the event of a non-answered call; and

(f) Include the participant's preference regarding frequency of calls.

(8) Transportation services shall:

(a) Be provided by a trained individual;

(b) Carry older persons to or from community resources to access or receive needed services;

(c) Comply with federal, state, and local regulations; and

(d) Use vehicles safe and accessible to older persons and properly insured to protect the participants in accordance with state laws.

(9) Assisted transportation services shall be provided:

(a) In accordance with subsection (8) of this section; and

(b) To a person who requires accompaniment for reasons of safety or protection to or from his or her physician, dentist, or other necessary services as determined by the case manager[ICG].

(10) In-home services shall be provided:

(a) By trained staff; ~~and~~

(b) As determined by the case manager; ~~and~~[ICG]

**(c) By an individual licensed, insured, and experienced in the appropriate trade to complete home modifications or repairs.**

Section 5. Case Manager Requirements.

(1) A case manager [~~and an ICG~~] shall:

(a)1. Possess a bachelor's degree in a health or human services field from an accredited college or university:

a. With one (1) year experience in health or human services; or  
b. The educational or experiential equivalent in the field of aging or physical disabilities;

2. Be a currently licensed RN as defined in KRS 314.011(5) who has at least two (2) years of experience as a professional nurse in the field of aging or physical disabilities; or

3. Be a currently licensed LPN as defined in KRS 314.011(9) who:

a. Has at least three (3) years of experience in the field of aging or physical disabilities; and

b. Is supervised by an RN who consults and collaborates on changes to the plan of care;

(b) Be a department certified case manager beginning July 1, 2015; and

(c) Be supervised by a case management supervisor.

(2) A master's degree from an accredited college or university may be substituted for the required experience.

(3) Each client shall be assigned a:

(a) Case manager; or

(b) Social service assistant.

(4) A client shall be assessed initially and reassessed at least annually thereafter by a case manager[~~an ICG~~] that possesses a bachelor's degree, a master's degree, or is a licensed registered nurse (RN).

(5) After each assessment or reassessment, the case manager[ICG] shall determine eligibility and service level based on the DAIL-HC\_01, Scoring Service Level of each assessed individual.

(6) If the client is ineligible, the case shall be closed and the reason documented in the case record with notification mailed to the client or caregiver.

(7) The case manager shall:

(a) Be responsible for coordinating, arranging, and documenting those services provided by:

1. Any funding source; or

2. A volunteer;

(b) Make a reasonable effort to secure and utilize informal supports for each client;

(c) Document the reasonable effort in the client's case record;

(d) Monitor each client by conducting a home visit according to the assessed service level and coordinate a telephone contact between home visits. Clients shall be contacted at a minimum as follows:

1. Level 1, a home visit shall be conducted every other month;
2. Level 2, a home visit shall be conducted every four (4) months;

or

3. Level 3, a home visit shall be conducted every six (6) months; and

(e) Document in the case record each contact made with a client, as specified in paragraph (d) of this subsection.

(8) A district shall employ a case manager[~~an ICG~~] to assess the eligibility and needs for each client.

(9) A client assessed at a Level 1 or a Level 2 shall be assigned a case manager.

(10) A client assessed at a Level 3 shall have a case manager or a social service assistant assigned to assist with meeting **the client's**[~~their~~] needs.

(11) A client shall receive in-home services in accordance with an individualized plan of care developed through participant directed planning which shall:

(a) Relate to an assessed problem;

(b) Identify goals to be achieved;

(c) Identify a scope, duration, and unit of service required;

(d) Identify a source of service;

(e) Include a plan for reassessment; and

(f) Be signed by the client or client's representative and case manager with a copy provided to the client.

(12) Case management services shall not be provided to an individual on a waiting list.

Section 6. Multipurpose Senior Center Selection.

(1) An **area agency on aging and independent living (AAAIL)** shall designate a multipurpose senior center within each urban community of the AAAIL's planning and service area.

(2) If only rural communities are within an AAAIL's planning and service area, the AAAIL shall designate at least one (1) multipurpose senior center in the AAAIL's planning and service area.

(3) Selection of a multipurpose senior center location shall be based on:

(a) Demographic information concerning the population of older persons in its service area; and

(b) The advice of public and voluntary agencies serving the elderly.

(4) The AAAIL shall specify designation of a multipurpose senior center within its area plan.

(5) The following factors shall be given consideration in choosing a site for the multipurpose senior center:

(a) Demographic information and projections;

(b) Accessibility to the maximum number of people with particular attention to:

1. Low-income older individuals, including low-income minority older individuals;

2. Older individuals with limited English proficiency;

3. Older individuals residing in rural areas; and

4. The number of older individuals at-risk for institutional placement;

(c) Proximity to other services and facilities;

(d) Convenience to public or private transportation or a location within walking distance for participants;

(e) The absence of structural barriers or difficult terrain; and

(f) The safety and security of participants and staff.

Section 7. Multipurpose Senior Center Specifications.

(1) A multipurpose senior center shall:

(a) Provide barrier-free access and movement within the facility pursuant to 45 C.F.R. 85.42 and 85.43;

(b) Be clearly identified with a sign;

(c) Make arrangements:

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1. For the security of facility equipment, furniture, and files; and
2. To offer activities at other sites in its service area; and
- (d) Be free of physical hazards in accordance with the DAIL-MS-01 Multipurpose Senior Center Site Approval Checklist.
- (2) The facility shall be properly maintained and repaired to meet the safety and security of staff and participants.
- (3) An existing multipurpose senior center that does not meet the requirements of subsections (1) and (2) of this section shall comply with a corrective action plan administered by the department.
- (4) The multipurpose senior center shall have thirty (30) days from receipt of the corrective action plan to comply.
- (5) The department may withhold funding if the multipurpose senior center does not comply with the corrective action plan.

**Section 8. Multipurpose Senior Center Requirements.**

- (1) Each multipurpose senior center shall have a full time director and paid or volunteer staff to administer the center.
- (2) At least one (1) staff person or the director shall be present at the site during hours of operation.
- (3) At a minimum, a multipurpose senior center shall be open six (6) hours per day and five (5) days per week.
- (4) A multipurpose senior center shall provide the following services:
  - (a) Nutrition services in accordance with 910 KAR 1:190; and
  - (b) Support Services including:
    1. Transportation;
    2. Outreach;
    3. Information and assistance; and
    4. Other services identified in the planning and service regions area plan.
  - (5) A multipurpose senior center shall:
    - (a) Comply with the confidentiality and disclosure of a client as follows:
      1. Adhere to the confidentiality and disclosure of client information pursuant to KRS 194A.060 and 5 U.S.C. 552, the Federal Freedom of Information Act;
      2. Not disclose client information without the informed consent of the person or legal representative, unless the disclosure is required by a court order or for program monitoring authorized by federal, state, or local monitoring agencies; and
      3. Not reveal client information that is protected by attorney-client privilege; and
    - (b) Refer reports of abuse, neglect, or exploitation to the Department for Community Based Services.

**Section 9. Satellite Senior Center Selection.**

- (1) The AAAIL shall designate a satellite senior center within the planning and service area of each rural community if:
  - (a) A multipurpose senior center is not already located in the county; or
  - (b) Additional satellite senior centers are needed to provide aging programs to seniors of that area.
- (2) The AAAIL shall specify designation of a satellite senior center within its area plan.
- (3) A satellite senior center shall meet the multipurpose senior center selection requirements of Section 6(2) of this administrative regulation.

**Section 10. Satellite Senior Center Requirements.**

- (1) Each satellite senior center shall have a director who is responsible for the administration of the site.
- (2) At least one (1) staff person or the director shall be present at the site during hours of operation.
- (3) At a minimum, a satellite senior center shall be open for eight (8) nonconsecutive hours per week.
- (4) An AAAIL shall organize and advertise activities, services, and schedules of operation in advance.
- (5) A satellite senior center shall:
  - (a) Unless already established in a multipurpose senior center in the same community, provide access services which shall include:
    1. Transportation;
    2. Outreach; and
    3. Information and referral; and

- (b) Adhere to the confidentiality requirements of Section 8(5) of this administrative regulation.
- (6) A satellite senior center may provide nutrition services in accordance with 910 KAR 1:190.

**Section 11. Approval of a Multipurpose and Satellite Senior Center.**

- (1) Supportive or nutrition services shall be funded at a multipurpose and satellite senior center if the center has been approved by the department.
- (2) A multipurpose and satellite senior center shall not become operational until an on-site visit by the department has been completed and approval given by the department.
- (3) Prior to approval of a multipurpose and satellite senior center, it shall be inspected by the following:
  - (a) The local health department for compliance with applicable health codes depending on the types of services provided at the site;
  - (b) The local fire department for compliance with fire and building safety codes; and
  - (c) An AAAIL inspection using a:
    1. DAIL-MS-01 Multipurpose Senior Center Checklist; or
    2. DAIL-SS-02 Satellite Senior Center Checklist.

**Section 12. Altering Multipurpose or Satellite Senior Center.**

- (1) Prior approval shall be obtained from the department by an AAAIL which intends to:
  - (a) Close or open a new multipurpose or satellite senior center;
  - (b) Change the location of the multipurpose or satellite senior center;
  - (c) Change the method of providing services in a manner that affects availability of ongoing services; or
  - (d) Reduce the level or number of services.
- (2) Justification for the change shall include:
  - (a) The proposed effective date;
  - (b) The need or reason;
  - (c) The number of participants affected;
  - (d) Whether this change is temporary or permanent;
  - (e) A cost benefit analysis;
  - (f) For a change made to an existing multipurpose or satellite senior center, whether this facility was altered, renovated, or constructed with Older Americans Act funds and the date work was completed;
  - (g) Whether the AAAIL advisory council recommended this change;
  - (h) What provisions are proposed to continue services to the participants; and
  - (i) For a proposed multipurpose or satellite senior center, costs involved in meeting local fire, health, safety, and sanitation regulations.
- (3) A request to open a new multipurpose or satellite senior center shall include copies of completed local health department inspections and a completed:
  - (a) DAIL-MS-01 Multipurpose Senior Center Checklist; or
  - (b) DAIL-SS-02 Satellite Senior Center Checklist.
- (4) If meal preparation at a new multipurpose or satellite senior center is proposed, the multipurpose or satellite senior center shall notify the:
  - (a) Department;
  - (b) Local fire department; and
  - (c) Local health department.
- (5) The department shall review the information submitted and determine if an on-site visit is necessary for approval.
- (6) In case of altered multipurpose or satellite senior center operations due to damages caused by fire, flood, storm, high winds, tornados, or other safety issues, the department shall be notified within one (1) business day that emergency alterations are necessary by:
  - (a) Telephone;
  - (b) Email; or
  - (c) Fax.
- (7) Prior approval shall be obtained from the department on a conditional basis for emergency circumstances with final approval pending:

- (a) Written documentation of the proposed change;
  - (b) Local fire, health, and safety inspections; and
  - (c) An on-site inspection by the department if the department determines a visit is necessary for final approval.
- (8) The AAAIL shall specify alterations of a multipurpose and satellite senior center within its area plan for department approval.

Section 13. Training and Education. An AAAIL shall implement the following training and education programs for multipurpose and satellite senior center providers of service:

- (1) An annual program assessment to identify training needs and develop correlating plans;
- (2) An identification and review of resources available to meet training needs;
- (3) The development of a comprehensive education and training plan;
- (4) A search for additional resources to implement the plan;
- (5) The coordination of education programs with private, public, governmental, and educational organizations and institutions; and
- (6) A plan to implement staff development initiatives.

Section 14. Monitoring. An AAAIL shall:

- (1) Monitor and assess services to determine compliance with contract requirements and an approved area plan; and
- (2) Submit written evaluation of its findings to DAIL annually.

Section 15. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "DAIL-GA-01, Priority Screening Tool", November 2014;
  - (b) "DAIL-MS-C-01, Multipurpose Senior Center Checklist", August 2014;
  - (c) "DAIL-SS-C-02, Satellite Senior Center Checklist", August 2014; and
  - (d) "DAIL-HC-[ ]-01, Scoring Service Level", December 2023~~April 2014~~.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dail/Pages/default.aspx>.

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Protection and Permanency**  
**(As Amended at ARRS, March 11, 2024)**

**922 KAR 5:070. Adult protective services.**

RELATES TO: KRS ~~[Chapter 13B, ]~~61.872,~~[194A.010, ]~~202A.051, 202B.100, Chapter 209, 387.540(1),~~[42 U.S.C. 1397]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 209.030(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate~~adopt~~ all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.030(1) authorizes the secretary to promulgate administrative regulations necessary for the implementation of adult protective services. This administrative regulation establishes the procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

Section 1. Definitions.

- (1) "Abuse" is defined by KRS 209.020(8).
- (2) "Adult" is defined by KRS 209.020(4).
- (3) "Authorized agency" is defined by KRS 209.020(17).
- (4) "Caretaker" is defined by KRS 209.020(6).
- (5) "Emergency" is defined by KRS 209.020(11).
- (6) "Employee" is defined by KRS 209.032(1)(a).
- (7) "Exploitation" is defined by KRS 209.020(9).
- (8) "Investigation" is defined by KRS 209.020(10).
- (9) "Mental injury" means a negative impact on the emotional or psychological state of the adult that is inconsistent with an individual's medical care and:
  - (a) Requires medical or therapeutic treatment;
  - (b) Is manifested by a behavioral change; or
  - (c) Caused the person to feel fear, distress, humiliation, or ridicule.
- (10) "Neglect" is defined by KRS 209.020(16).
- (11) "Protective services" is defined by KRS 209.020(5).
- (12) "Records" is defined by KRS 209.020(15).
- (13) "Unreasonable confinement" means the unnecessary restriction of an adult's movement through physical or chemical restraints or the unnecessary isolation of an individual.
- (14) "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

Section 2. Receiving a Report of Adult Abuse, Neglect, or Exploitation.

- (1) An individual suspecting that an adult has suffered abuse, neglect, or exploitation shall:
  - (a) Report to the cabinet in accordance with KRS 209.030(2) and (3); and
  - (b) Provide the information established~~specified~~ in KRS 209.030(4).
- (2) The identity of the reporting individual shall remain confidential in accordance with KRS 209.140.
- (3) The cabinet shall make available a twenty-four (24) hour on-call response system for emergency reporting after normal office hours.
- (4) The cabinet shall investigate an anonymous report that provides sufficient information regarding the alleged abuse, neglect, or exploitation of an adult.
- (5) If a report does not meet criteria for investigation, the cabinet may refer the reporting source to:
  - (a) Community resources;
  - (b) General adult services in accordance with 922 KAR 5:090; or
  - (c) A domestic violence protective services provider.
- (6) Upon accepting a report for investigation of alleged adult abuse, neglect, or exploitation, the cabinet shall:
  - (a) Conduct an initial assessment and initiate an investigation in accordance with KRS 209.030(5); and
  - (b) Take into consideration the safety of the adult when proceeding with the actions necessary to initiate an investigation.
- (7) The cabinet shall initiate an investigation upon acceptance of a report of:
  - (a) Abuse if the report alleges an adult:
    - 1. Being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, or kidney areas;
    - 2. Has an injury that:
      - a. Was inflicted by another person; or
      - b. Is of unknown origin in a critical area of the body;
    - 3. Was sexually abused;
    - 4. Was subjected to unreasonable confinement;
    - 5. Was subjected to intimidation; or
    - 6. Received a punishment that resulted in pain, injury, or mental injury;
  - (b) Neglect of an adult that may result in harm to the health and safety of the adult in the following areas:
    - 1. Hygiene neglect, if the adult has physical symptoms that require treatment due to poor care as a result of:
      - a. An act or omission by self or a caretaker; or

- b. The absence of a caretaker;
  - 2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of necessary and appropriate supervision;
  - 3. Food neglect, if an adult shows symptoms of:
    - a. Malnutrition;
    - b. Dehydration;
    - c. Food poisoning; or
    - d. Lack of adequate food for a period of time that:
      - (i) Results in physical symptoms; or
      - (ii) Requires treatment;
  - 4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caretaker is not taking appropriate action to eliminate the problem; or
  - 5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that:
    - a. Results in an observable decline in the adult's health and welfare;
    - b. May be life threatening; or
    - c. May result in permanent impairment;
    - (c) Exploitation of an adult if the report alleges an adult has lost or is losing resources to a person in a position of trust to the alleged victim as a result of at least one (1) of the following:
      - 1. Isolation from friends, relatives, or important information, such as:
        - a. Screening telephone calls;
        - b. Denying visitors; or
        - c. Intercepting mail;
      - 2. Physical or emotional dependency;
      - 3. Manipulation; or
      - 4. Acquiescence[-; and]
    - ~~[5.] [Loss of resources to a person in a position of trust to the alleged victim];~~ or
    - (d) An adult in need of protective services.
  - (8) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.
  - (9) The following criteria shall be used in identifying a report of alleged adult abuse, neglect, or exploitation not requiring an adult protective services[service] investigation:
    - (a) The report does not meet the statutory definitions of:
      - 1. Adult;[-and]
      - 2.~~[a.]~~ Abuse;
      - 3.~~[b.]~~ Neglect; or
      - 4.~~[c.]~~ Exploitation; or
    - (b) There is insufficient information to:
      - 1. Identify or locate the adult; or
      - 2. Explore leads to identify or locate the adult.
  - (10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall provide the information established[specified] in KRS 209.030(4):
    - (a) For a determination of investigation assignment by cabinet supervisory staff;
    - (b) To the local guardianship office, if the adult is a state guardianship client; and
    - (c) To appropriate authorized agencies, as established[specified] in KRS 209.030(5).
- Section 3. Adult Protective Services[Service] Investigations.
- (1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).
  - (2) An adult protective services[service] investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.
  - (3) Information obtained as a result of a protective services[service] investigation shall be kept confidential in accordance with KRS 209.140.
  - (4) Requests for written information of the protective services[service] investigation, except for court ordered releases, shall be handled through the open records process in accordance with KRS 61.872 and 922 KAR 1:510.

- (5) Designated regional cabinet staff shall initiate the investigation of a report of alleged adult abuse, neglect, or exploitation.
    - (a) If the accepted report of alleged adult abuse, neglect, or exploitation with the expressed permission of the adult indicates:
      - 1.~~[(a)]~~ An emergency, the investigation shall be initiated within four (4) hours; or
      - 2.~~[(b)]~~ A nonemergency, the investigation shall be initiated within forty-eight (48) hours.
    - (b) If the accepted report of alleged adult abuse or neglect resulted in the death of an adult, the investigation shall be initiated within forty-eight (48) hours.
  - (6) If permission is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.
    - (7)
      - (a) The cabinet shall obtain a written voluntary statement of adult abuse, neglect, or exploitation if the adult, witness, or alleged perpetrator is willing to provide the written statement; and
      - (b) The cabinet shall inform the adult, witness, or alleged perpetrator that the:
        - 1. Statement may be shared with appropriate authorized agencies;
        - 2. Statement may be used in an administrative hearing conducted by the cabinet; and
        - 3. Individual may be required to testify in an administrative hearing or in a court of law.
    - (8) If investigating reports of alleged abuse or neglect of an adult resulting in death, designated regional cabinet staff shall:
      - (a) Examine the coroner's or doctor's report;
      - (b) Obtain a copy of the death certificate for the case record, if possible;
      - (c) Notify the commissioner or designee;
      - (d) Consult with appropriate law enforcement, in accordance with KRS 209.030(6)(a) in completing the investigation, if an adult died allegedly as a result of abuse or neglect; and
      - (e) Determine if another resident in an alternate care facility is at risk of abuse or neglect, if the findings of an investigation suggest that an adult in the alternate care facility died allegedly as a result of abuse or neglect.
    - (9) Unless the legal representative is alleged to have abused, neglected, or exploited the adult, a legal representative may act on behalf of an adult for purposes of this administrative regulation.
- Section 4. Results of the Investigation.
- (1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:
    - (a) The adult's account of the situation, if possible;
    - (b) The alleged perpetrator's account of the situation, if available;
    - (c) The information supplied by collateral contact;
    - (d) Records and documents;
    - (e) The assessment information;
    - (f) Previous reports involving the adult or alleged perpetrator; and
    - (g) Other information relevant to the protection of an adult.
  - (2) The findings of the adult protective services[service] investigation shall be:
    - (a) Shared with appropriate authorized agencies in accordance with KRS 209.030(5); and
    - (b) Documented on the cabinet's database.
  - (3) Designated regional cabinet staff shall maintain a written record, as established[specified] in KRS 209.030(5)(d), to include:
    - (a) Information reported in accordance with KRS 209.030(4); and
    - (b) A narrative documenting:
      - 1. The investigation; and
      - 2. Findings of the investigation.
  - (4) If an issue or concern identified by the cabinet does not require a protective services[service] case being opened, the cabinet may work with the adult to develop an aftercare plan:
    - (a) At the consent of the adult; and
    - (b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

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Section 5. Substantiation Criteria and Submission of Findings.

(1) In determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:

- (a) Adult; and
- (b)
  1. Abuse;
  2. Neglect; or
  3. Exploitation.

(2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of and substantiate abuse, neglect, or exploitation.

(3) A finding made by cabinet staff shall not be a judicial finding.

(4) Cabinet supervisory staff shall review and approve a finding of an investigation prior to its finalization.

Section 6. Reports of Alleged Adult Abuse, Neglect, or Exploitation Involving an Employee or Compensated Person. If the cabinet receives a report involving an employee or a person acting with the expectation of compensation, cabinet staff shall provide the alleged perpetrator during the investigative interview:

(1) Notice of the basic allegations, which shall be void of any specifics that **could/may** compromise the investigation;

(2) Notice that the alleged perpetrator will be provided notification of the findings upon completion of the investigation;

(3) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032; and

(4) A statement that a validated substantiated finding shall be reported on the vulnerable adult maltreatment[caregiver misconduct] registry established by 922 KAR 5:120.

Section 7. Opening a Case.

(1) A case may be opened:

- (a) As a result of a protective services[service] investigation; or
- (b) Upon identification of an adult through a general adult services assessment as being at risk of abuse, neglect, or exploitation.

(2) The decision to open a case shall be based on the:

- (a) Voluntary request for, or acceptance of, services by an adult who needs adult protection or general adult services; or
- (b) Need for involuntary emergency protective services.

(3) If it has been determined that an adult is incapable of giving consent to receive protective services, the court may assume jurisdiction and issue an ex parte order in accordance with KRS 209.130.

(4) Emergency protective services shall be provided in accordance with KRS 209.100.

(5) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the **following**:

- (a) Designated regional cabinet staff;
  - (b) Family members;
  - (c) Family friends;
  - (d) Community partners; or
  - (e) Other individuals requested by the adult.
- (6) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:
- (a) Initiate a case plan with the adult; and
  - (b) Submit the plan to supervisory staff for approval.

Section 8. Referrals for Criminal Prosecution. The cabinet shall refer substantiated reports of adult abuse, neglect, or exploitation to Commonwealth's Attorneys and county attorneys for consideration of criminal prosecution in accordance with KRS 209.180.

Section 9. Restraining Order or Injunctive Relief. If necessary, designated regional cabinet staff shall contact the cabinet's Office of Legal Services for advice and assistance in obtaining restraining orders or other forms of injunctive relief that may be issued for protection of an adult, in accordance with KRS 209.040.

Section 10. Guardianship or Conservatorship of Disabled Persons.

(1) In an attempt to provide appropriate protective services, designated regional cabinet staff shall assess the need for guardianship if an individual appears unable to make an informed choice to:

- (a) Manage personal affairs;
- (b) Manage financial affairs; or
- (c) Carry out the activities of daily living.

(2) Designated regional cabinet staff may assist in protective services[service] situations in seeking out family, friends, or other interested and qualified individuals who are willing and capable to become guardians.

(3) Upon an order of the court, the cabinet shall file an interdisciplinary evaluation report in accordance with KRS 387.540(1).

Section 11. Involuntary Hospitalization.

(1) Designated regional cabinet staff shall encourage the voluntary hospitalization of an adult who needs to secure mental health treatment to avoid serious physical injury or death.

(2) Designated regional cabinet staff may file a petition for involuntary hospitalization in accordance with KRS 202A.051 and 202B.100 if:

- (a) The adult lacks the capacity to consent or refuses mental health treatment;
- (b) Other resources are not available;
- (c) Another petitioner is absent or unavailable; and
- (d) Prior cabinet supervisory approval is obtained.

Section 12. Reporting.

(1) Reports of alleged adult abuse, neglect, or exploitation shall be maintained in the cabinet's database for:

- (a) Use in future investigations; and
- (b) Annual reporting requirements as **established**[**specified**] in KRS 209.030(12).

(2) The cabinet shall submit a report annually to the Governor and Legislative Research Commission in accordance with KRS 209.030(12)(b).

(a) In addition to the information required by KRS 209.030(12)(b), the summary of reports received by the cabinet shall include for each individual who is the subject of a report:

1. Age;
  2. Demographics;
  3. Type of abuse;
  4. The number of:
    - a. Accepted reports; and
    - b. Substantiated reports; and
  5. Other information relevant to the protection of an adult.
- (b) The information required in paragraph (a) of this subsection shall only be provided if it does not identify an individual.

Section 13. Case Closure and Aftercare Planning.

(1) The cabinet's decision to close an adult protective services[service] case shall be based upon:

- (a) Evidence that the factors resulting in adult abuse, neglect, or exploitation are resolved to the extent that the adult's needs have been met;
- (b) The request of the adult; or
- (c) A lack of legal authority to obtain court ordered cooperation from the adult.

(2) An adult shall be:

- (a) Notified in writing of the decision to close the protective services[service] case; and
- (b) Advised of the right to request a service appeal in accordance with Section 14 of this administrative regulation.

(3) If an adult protective services[service] case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:

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- (a) At the consent of the adult; and
- (b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.
- (4) If the cabinet closes the protective services[service] case in accordance with this section, aftercare planning may link the adult to community resources for the purpose of continuing preventive measures.

**Section 14. Appeal Rights.**

- (1) A victim of adult abuse, neglect, or exploitation may request a service appeal in accordance with 922 KAR 1:320, Section 2.
- (2) If the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall receive appeal rights in accordance with 922 KAR 5:120.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Inspector General  
Division of Health Care  
(Amended After Comments)

902 KAR 20:048. Operation and services; nursing homes.

RELATES TO: KRS 194A.700(1), 194A.705(2)(c), 209.030, 209.032, 216.510-216.525, 216.532, 216.537, 216.540, 216.789, 216.793, 216A.080, 310.021, 310.031, 315.035, 333.030, 21 C.F.R. Part 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8[216B.010-216B.130, 216B.990]

STATUTORY AUTHORITY: KRS 216B.042[–216B.105, 311.560(3), (4), 314.011(8), 314.042(8), 320.210(2), EO 96-862]

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[and 216B.105 mandate that the Cabinet for Health Services regulate health facilities and health services]. This administrative regulation establishes minimum licensure requirements for the operation of and services provided by[existing] nursing homes.[This administrative regulation does not address the establishment of new nursing homes. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.]

Section 1. Definitions.

(1) "Activities of daily living" is defined by KRS 194A.700(1)[means activities of self-help (e.g., being able to feed, bathe and dress oneself), communication (e.g., being able to place phone calls, write letters and understand instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities)].

(2) "Administrator" means a person who has a license to practice long-term care administration[is licensed as a nursing home administrator] pursuant to KRS 216A.080.

(3) ["Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.]

[(4)] "Licensed dietitian[dietician]" means a health care professional who is licensed pursuant to KRS 310.021.

[(4)][(5)] "Nursing home" means an establishment located in a permanent building that has resident beds and provides:

(a) Medical services; and

(b) Continuous nursing services["Facility" means a nursing home facility.]

[(4)] ["License" means an authorization issued by the cabinet for the purpose of operating a nursing home and offering nursing home services].

[(5)][(6)][(5)] "PRN medications" means medications administered as needed.

[(6)] ["Qualified dietitian" or "nutritionist" means:]

[(a)] [A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or]

[(b)] [A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or]

[(c)] [A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.]

[(6)][(7)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a [patient or the movement of a] portion of a patient's body.

~~Section 2. [Scope of Operations and Services. Nursing homes are establishments with permanent facilities that include inpatient beds. Services provided include medical services, and continuous nursing services. Patients in a nursing home facility require inpatient care but do not currently require inpatient hospital services, and have a variety of medical conditions.]~~

~~[Section 3.] Administration and Operation.~~

~~(1) Licensee. The licensee shall:~~

~~(a) Be legally responsible for:~~

~~1. The operation of the facility; and[–for]~~

~~2. Compliance with federal, state and local laws, and administrative regulations pertaining to the operation of the facility; and~~

~~(b) Contract for professional and supportive services not available in the facility as dictated by the needs of each resident.~~

~~(2) [Administrator.]~~

~~[(a)] All facilities shall have an administrator who shall:~~

~~(a) Be[who is] responsible for the day-to-day operation of the facility; and~~

~~(b) Designate one (1) or more staff to act on behalf of the administrator or to perform the administrator's responsibilities in the administrator's[who shall delegate such responsibility in his] absence.~~

~~[(b)] [The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.]~~

~~(3) Administrative records.~~

~~(a) The facility shall maintain a resident registry that documents the:~~

~~1. Name of each resident;~~

~~2. [bound, permanent, chronological patient registry showing] Date of admission; and~~

~~3. [–name of patient, and–] Date of discharge.~~

~~(b) The facility shall [require and–] maintain a record of written recommendations or comments from consultants regarding the program and its development on a per visit basis.~~

~~(c) The facility shall maintain menu and food purchase records[ shall be maintained].~~

~~(d)~~

~~1. The administrator or administrator's designee shall make a written report of any incident or accident involving a:~~

~~a. Resident [patient (–including a medication error[errors] or drug reaction;~~

~~b. [reactions,–] Visitor; or~~

~~c. Staff member.~~

~~2. The report shall:~~

~~a. Identify[be made and signed by the administrator or nursing service supervisor, and] any staff member who witnessed the incident; and[–]~~

~~b. [The report shall–] Be filed in an incident file.~~

~~(4) Policies. The facility shall have[establish] written policies and procedures that govern all services provided by the facility. The [written] policies shall[–include]:~~

~~(a) Address resident[patient] care and services, including[–to include] physician, nursing, pharmaceutical[–(including medication stop orders policy)], and residential services;[–]~~

~~(b) Require[Adult and child protection. The facility shall have written policies which assure] the reporting of cases of abuse, neglect, or exploitation of adults [and children–] pursuant to KRS 209.030, including evidence that all allegations of abuse, neglect, or exploitation shall be thoroughly investigated internally to prevent further potential abuse while the investigation is in progress; [Chapters 209 and 620.]~~

~~(c) Prohibit the use of chemical and physical restraints, except as authorized by KRS 216.515(6); and[Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.]~~

(d) ~~Missing patient procedures. The facility shall a written procedure to~~ Specify in a step-by-step manner the actions ~~that~~which shall be taken by staff if ~~when~~ a resident~~patient~~ is ~~determined to be~~ lost, unaccounted for, or on other unauthorized absence.

(5) ~~Resident~~Patient ~~rights.~~ Resident~~Patient~~ rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) A resident in a nursing home shall:

1. ~~Patients shall~~ Be admitted only upon the referral of a physician~~;~~

2. ~~Additionally, the facility shall admit only persons who~~ Have a ~~variety of~~ medical condition that requires ~~conditions and require~~

a. Medical services~~;~~

b. Continuous nursing~~medical~~ services~~;~~ and

c. Residential~~Inpatient~~ care, but ~~do~~ not ~~currently require~~ ~~inpatient hospital services; and~~

3. ~~Not have~~ The facility shall not admit persons whose care needs ~~that exceed~~ the capability of the facility.

(b)

1. Upon admission, the facility shall obtain the:

a. Resident's~~patient's~~ medical diagnosis;

b. ~~;~~ Physician's orders for the care of the resident~~patient~~ and~~l~~ the

c. Transfer form.

2. Within forty-eight (48) hours after admission, the facility shall obtain a medical evaluation from the resident's~~patient's~~ physician including:

a. Current medical findings~~;~~

b. Medical history; and

c. Physical examination.

3. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or nursing facility, if done within five (5) days prior to admission.

(c) ~~Upon~~Before admission, the facility shall provide the resident~~patient~~ and a responsible member of the resident's~~his~~ family or other designated representative with written information regarding the facility's policies~~committee shall be informed in writing of the established policies of the facility~~ including:

1. Services offered and charges~~;~~fees, reimbursement;

2. Visitation rights during serious illness~~;~~

3. Visiting hours; and~~;~~

4. Type of diets offered~~and services rendered~~.

(d) The facility shall ~~provide and~~ maintain a system for:

1. Identifying each resident's~~patient's~~ personal property; and

2. ~~Facilities for~~ Safekeeping ~~of his declared~~ valuables, including assurance that each resident's~~Each patient's~~ clothing and other property ~~is~~shall be reserved for the resident's~~his~~ own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for residents who are:

(a) ~~patients being~~ Transferred to another health care facility; or

(b) ~~being~~ Discharged to the home.

(8) Transfer and discharge.

(a) The facility shall:

1. Comply with the requirements of 900 KAR 2:050 upon~~when~~ transferring or discharging a resident; and~~residents.~~

2. ~~(a)~~ The facility shall Have written transfer procedures and agreements for the transfer of a resident~~patients~~ to a higher intensity level of care, if indicated~~other health care facilities which can provide a level of inpatient care not provided by the facility~~.

(b) A~~Any~~ facility ~~that~~which does not have a transfer agreement in effect, but has attempted in~~which documents a~~ good faith ~~attempt~~ to enter into ~~such~~ an agreement shall be considered to be in compliance with the requirements of paragraph (a) 2. of this subsection~~licensure requirement~~.

(c) The transfer procedures and agreements shall:

1. Specify the responsibilities each party~~institution~~ assumes in the transfer of residents~~patients and~~

2. Establish responsibility for notifying the other party~~institution~~ promptly of an~~the~~ impending transfer; and~~of a patient and~~

3. Arrange for appropriate and safe transportation of the resident

and resident's files.

(d) Except in cases of emergency, the administrator shall:

1. ~~(b)~~ Initiate a transfer through the resident's physician if the resident's~~When the patient's~~ condition exceeds the scope of services of the facility~~;~~ the patient, upon physician's orders ~~(except in cases of emergency)~~, shall be transferred promptly to a hospital or a skilled nursing facility~~;~~ or

2. Contract for services ~~shall be contracted for~~ from another community resource to meet a resident's needs.

(e) ~~(e)~~ If a resident's condition improves and the resident may be served~~When changes and progress occur which would enable the patient to function~~ in a less ~~structured and~~ restrictive environment, ~~and the less restrictive environment cannot be offered at the facility,~~ the facility shall offer assistance in making arrangements for the resident~~patients~~ to be transferred to a lower intensity level of care~~facilities providing appropriate services~~.

(f) ~~(d)~~ Except in an emergency, the resident, resident's responsible family member~~patient, his next of kin,~~ or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge~~of any patient~~.

(g) ~~(e)~~ If a resident transfers~~When a transfer is~~ to another level of care~~within the same facility~~, the complete medical record or a current summary of the resident's medical record shall accompany the resident~~thereof shall be transferred with the patient~~.

(h) ~~(f)~~ If the resident~~patient~~ is transferred to another health care facility or home to receive~~be cared for by a~~ home health services~~agency~~, a transfer form shall:

1. Accompany the resident; and~~patient. The transfer form shall~~

2. Include the following~~at least~~:

a. Physician's orders (if available)~~;~~

b. Current information regarding the resident's~~relative to~~ diagnosis with a history of any health conditions that require~~problems requiring~~ special care~~;~~

c. A summary of ~~the course of~~ prior treatment, special supplies, or equipment needed for the resident's~~patient~~ care~~;~~ and

d. Pertinent social information on the resident~~patient~~ and resident's~~his~~ family.

(9) Tuberculosis testing.

(a) All employees of a nursing home~~and patients~~ shall be screened and tested for tuberculosis in accordance with the provisions of 902 KAR 20:205.

(b) Residents of a nursing home shall be screened and tested in accordance with 902 KAR 20:200~~Tuberculosis testing in long term care facilities~~.

(10) Personnel.

(a) In accordance with KRS 216.532, a nursing home shall not employ or be operated by an individual who is listed on the nurse aide and home health aide abuse registry established by 906 KAR 1:100.

(b) In accordance with KRS 209.032, a nursing home shall not employ or be operated by an individual who is listed on the caregiver misconduct registry established by 922 KAR 5:120.

(c) A nursing home shall obtain a criminal record check on each applicant for initial employment in accordance with KRS 216.789 and 216.793.

(d) A nursing home may participate in the Kentucky National Background Check Program established by 906 KAR 1:190 to satisfy the background check requirements of paragraphs (a) through (c) of this subsection.

(e) A~~Job descriptions.~~ written job description~~descriptions~~ shall be developed for each category of personnel, including~~to include~~

1. Qualifications~~;~~

2. Lines of authority; and

3. Specific duty assignments.

(f) ~~(b)~~ ~~Employee records.~~ Current employee records shall be maintained on each staff member and contain:

1. Name and address;

2. Verification ~~of~~ shall include a resume of each employee's training and experience, including evidence of current licensure~~or~~ registration, or certification, if applicable;

3. Employee~~where required by law,~~ health records;

4. Annual performance evaluations; and

5. Documentation of compliance with the background check



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~~requirements of paragraphs (a) through (c) of this subsection; records of in-service training and ongoing education, and the employee's name, address and Social Security number.~~

~~(g)(e) Staffing requirements.~~

~~1. Staffing in the facility shall be sufficient in number and qualifications[have adequate personnel] to meet the personal care, nursing care, supervision, and other needs of each resident[the patients] on a twenty-four (24) hour basis.[The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this administrative regulation.]~~

~~2. [When the staff to patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.]~~

~~[3.] A responsible staff member shall be on-site[on duty] and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire, or other emergencies.~~

~~3.[4.] The use of volunteers shall not be included in the[ counted to make up] minimum staffing requirements of this paragraph.~~

~~(h)(5.) The facility shall have a director of nursing [service] who;~~

~~1. Is a registered nurse and [who] works full time during the day;[;] and [who]~~

~~2. Devotes full time to the nursing services[service] of the facility.~~

~~(i) If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing to ensure[; se] that there is[shall be] the equivalent of a full-time director of nursing[service].~~

~~(j) The director of nursing shall;~~

~~1. Be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric, or geriatric nursing;[;-]~~

~~2. Be[The director of the nursing service shall be] responsible for[;]~~

~~[a-] developing and maintaining;~~

~~a. Nursing service objectives;[;-]~~

~~b. Standards of nursing practice;[;-]~~

~~c. Nursing procedure manuals;[;-] and~~

~~d. Written job descriptions for each level of nursing personnel;[;-]~~

~~3.[b-] Recommend[recommending] to the administrator the number and levels of nursing personnel to be employed;~~

~~4. Participate in staff[, participating in their] recruitment and selection or recommend[and recommending] termination, if[of employment when] necessary;[;-]~~

~~5.[c-] Assign and supervise[Assigning and supervising] all levels of nursing personnel;[;-]~~

~~6.[d-] Participate[Participating] in planning and budgeting for nursing care;[;-]~~

~~7.[e-] Participate[Participating] in the development and implementation of resident[patient] care policies;[;-]~~

~~8.[f-] Coordinate[Coordinating] nursing services with other resident[patient] care services;[;-]~~

~~9.[g-] Plan and conduct[Planning and conducting] orientation programs for new nursing personnel and annual[continuing] in-service education for all nursing personnel;[;-]~~

~~10.[h-] Participate[Participating] in the screening of prospective residents[patients] in terms of required nursing services;~~

~~11. Ensure[Assure][and nursing skills available.]~~

~~[i-] [Assuring] that a written monthly assessment of the resident[s]patient[s] general condition is completed;[;-]~~

~~12.[j-] Ensure[Assure][assuring] that a nursing care plan is:[shall be]~~

~~a. Established for each resident[patient] and[shall be that his plan shall be]~~

~~b. Reviewed and modified as necessary;[;-]~~

~~13.[k-] Ensure[Assure] that all nurses and unlicensed staff[Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies] are assigned duties consistent with their training and experience; and[;-]~~

~~14.[l-] Ensure[Assure][Assuring] that a monthly review of each~~

~~resident[s]patient[s] medications is completed and notify[notifying] the resident's physician if[when] changes are appropriate.~~

~~(k)(6-) Supervising nurse.~~

~~1. The facility shall have a full-time registered nurse who provides or supervises nursing care[shall be provided by or under the direction of a full-time registered nurse].~~

~~2. The supervising nurse;~~

~~a. May be the director of nursing or the assistant director of nursing;~~

~~b. [and] Shall be trained or experienced in the areas of;~~

~~(i) Nursing administration and supervision;[;-]~~

~~(ii) Rehabilitative nursing;[;-]~~

~~(iii) Psychiatric nursing; or~~

~~(iv) Geriatric nursing;[;-]~~

~~c. [The supervising nurse] Shall make daily rounds to all nursing units that perform[performing such] functions that include:[as]~~

~~(i) Visiting each resident[patient]; and~~

~~(ii) Reviewing medical records, medication cards, patient care plans, and staff assignments;[;-] and~~

~~d. If[whenever] possible, shall accompany the physician during visits with residents[accompanying physicians when visiting patients].~~

~~(l)(7-) Charge nurse.~~

~~1. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times who shall be[is] responsible for the nursing care of residents[patients during her tour of duty].~~

~~2. If[When] a licensed practical nurse is on duty, a registered nurse shall be on call.~~

~~(m)(8-) Pharmacist. The facility shall retain a licensed pharmacist on a full-time, part-time, or consultant basis to direct pharmaceutical services.~~

~~(n)(9-) Therapists.~~

~~1.[a-] If the facility provides rehabilitative services beyond rehabilitative nursing care,[are offered, whether] directly or through contract, the[cooperative arrangements with agencies that offer therapeutic services, these] services shall be provided or supervised by qualified therapists that[te] include, depending on the service, licensed;~~

~~a. Physical therapists;~~

~~b. Speech-language[, speech] pathologists; or[and]~~

~~c. Occupational therapists.~~

~~2.[b-] If[When] supervision is less than full time, it shall be;~~

~~a. Provided on a planned basis; and[shall be]~~

~~b. Frequent enough, in relation to the [staff-]therapist's training and experience, to ensure[assure] sufficient review of individual treatment plans and progress.~~

~~3.[c-] In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all of a resident[s][the] needs[ of the patient,] and if[where] all rehabilitative[therapists-] services are administered under the direct supervision of a physician qualified in physical medicine who determines[will determine] the goals and limits of the therapists' work[;-] and prescribes modalities and frequency of therapy, persons with qualifications other than licensed therapists[those described in subsection (9)(c)9a of this section] may be assigned duties appropriate to their training and experience.~~

~~(o)(40-) Dietary. Each facility shall have a full-time staff person designated by the administrator who shall be:[-]~~

~~1. Responsible for the total food service operation of the facility; and~~

~~2. On duty a minimum of thirty-five (35) hours each week.~~

~~(p)(44-) Each facility shall designate one (1) or more staff[a person for the following areas] who shall[will] be responsible for:~~

~~1.[a-] Maintaining medical records;~~

~~2.[b-] Arranging for social services; and~~

~~3.[c-] Developing and implementing the activities program and therapeutic recreation.~~

~~(q)(42-) The facility shall ensure that supportive personnel, consultants, assistants, and volunteers are[shall be] supervised and [shall]function within the policies and procedures of the facility.~~

~~(r)(44) An employee who contracts a communicable or[Health requirements. No employee contracting an] infectious disease shall;~~

~~1. Be immediately excluded from[appear at] work; and~~

2. Remain off work until cleared as noninfectious by a health care practitioner acting within the practitioner's scope of practice until the infectious disease can no longer be transmitted.

(s) In-service training.

1. Each facility employee shall receive orientation and annual in-service training that corresponds with the staff member's job duties.

2. Documentation of orientation and in-service training shall be maintained in the employee's record and shall include:

a. Policies regarding the responsibilities of specific job duties;

b. Services provided by the facility;

c. (e) [Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and] Emergency and disaster procedures;

d. Procedures for the reporting of cases of adult abuse, neglect, or exploitation pursuant to KRS 209.030;

e. Residents rights established by KRS 216.510 to 216.525; and

f. (f) Other [In-service training.]

[4.] [All employees shall receive in-service] training and ongoing education that [to] correspond with the duties of the staff person's [their] respective job [jobs].

[2.] [All nursing personnel shall receive in-service or continuing education programs at least quarterly].

(11) Medical records.

(a) The facility administrator or staff member in charge of medical records shall assure that a complete medical record is kept for each resident with all entries current, dated, and signed.

(b) [shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed.] Each record shall include:

1. Identification information [data] including:

a. Resident's [The patient's] name; [;]

b. Address; [and]

c. Social Security, Medicare, and Medical Assistance identification number, if appropriate; [(if available);]

d. Name, address, and telephone number of the referral agency;

e. Name and telephone number of the resident's [personal] physician or health care practitioner;

f. Name, address, and telephone number of the resident's responsible family member, guardian, [next of kin] or other responsible person; and

g. Date of admission; [;]

2. Admitting medical evaluation as required by subsection (6)(b) of this section; [by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within five (5) days prior to admission.)]

3. Dated and signed orders for medication, diet, or [and] therapeutic services; [;]

4. Physician's progress notes indicating any [describing significant] changes in the resident's [patient's] condition, documented [written] at the time of each visit; [;]

5. Findings and recommendations of consultants; [;]

6. A medication sheet that includes [which contains] the date, time given, name of each medication dosage, name of the prescribing physician or practitioner as authorized by the scope of practice, [advanced practice registered nurse, therapeutically-certified optometrist, or physician assistant,] and name of nurse or certified medication aide [person] who administered the medication; [;]

7. Nurse's notes indicating any changes in the resident's [patient's] condition, including:

a. A, [actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of] response to medications or, [response to] treatments; [;]

b. Mode and frequency of PRN medications administered; [;]

c. Condition necessitating administration of PRN medication; [;]

d. Reaction following PRN medication; [;]

e. Visits from the [by] physician and phone calls to the

physician; [;]

f. Medically prescribed diets; and

g. Preventive maintenance or rehabilitative nursing measures; [;]

8. Written assessment of the resident's [patient's] monthly general condition; [;]

9. Documentation [Reports] of dental, laboratory, and x-ray services (if applicable); [;]

10. Changes in the resident's [patient's] response to the activity and therapeutic recreation program; and [;]

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(12) [(b)] Retention of records. After death or discharge, the completed medical record shall be placed in an inactive file and retained for at least six (6) years. [patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.]

(13) Confidentiality and Security: Use and Disclosure.

(a) The facility shall maintain the confidentiality and security of resident records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 through 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, and as provided by applicable federal or state law.

(b) The facility may use and disclose resident records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 through 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

(c) The facility may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

Section 3. [Section 4.] Provision of Services.

(1) Physician services.

(a) The health care of each resident [every patient] shall be under the supervision of a physician who, based on an evaluation of the resident's [patient's] immediate and long-term needs, prescribes a planned regimen of medical care that [which] covers:

1. Indicated medications; [;]

2. Treatments; [;]

3. Rehabilitative services; [;]

4. Diet; [;]

5. Special procedures recommended for the health and safety of the resident; [patient,]

6. Activities; [;]

7. Plans for continuing care; and

8. Discharge.

(b)

1. Each resident [Patients] shall be evaluated by a physician at least one (1) time [once] every thirty (30) days for the first sixty (60) days following admission.

2. After [Subsequent to] the 60th day following admission, the physician shall evaluate the resident [patients shall be evaluated by a physician] every sixty (60) days unless justified and documented by the attending physician in the resident's [patient's] medical record.

3. There shall be evidence in the resident's [patient's] medical record of the physician's [physician] visits [to the patient] at appropriate intervals.

(c) There shall be evidence in the resident's [patient's] medical record that the [patient's] attending physician has made arrangements [arrangement] for the medical care of the resident [patient] in the physician's absence.

(d)

1. [Availability of physicians for emergency care.] The facility shall have an arrangement [arrangements] with one (1) or more physicians who shall [will] be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the resident [patient] is not immediately available.

2. A schedule listing the names and telephone numbers of [these] physicians and the specific days each is [shall be] on call shall be posted in each nursing station.

3. There shall be established procedures for [to be followed in

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an] emergency situations that[, which cover]

a. Address immediate care of the resident[;patient,]

b. Persons to be notified[;] and

c. Reports to be prepared.

(2) Nursing services.

(a) [Twenty-four (24) hour nursing service.] There shall be twenty-four (24) hour nursing services[service] with a sufficient number of nursing personnel on duty at all times to meet the total needs of residents[patients].

(b) Nursing personnel shall include registered nurses, licensed practical nurses, and unlicensed staff members[aides and orderlies].

(c) The amount of nursing time available for resident[patient] care shall be exclusive of non-nursing[nonnursing] duties.

(d) Sufficient nursing time shall be available to assure that each resident[patient]:

1. Receives[Shall receive] treatments, medication, and diets as prescribed;

2. Receives[Shall receive] proper care to prevent decubiti and is[shall be] kept comfortable, clean, and well-groomed;

3. Is[Shall be] protected from accident or[and] injury by the adoption of indicated safety measures; and

4. Is[Shall be] treated with kindness and respect.

(3)[(b)] Rehabilitative nursing care.

(a) There shall be an active program of rehabilitative nursing care that helps[directed toward assisting] each resident[patient to] achieve and maintain the resident's[his] highest level of self-care and independence.

(b)[(1-)] Rehabilitative nursing care initiated in a[the] hospital shall be continued immediately upon admission to the facility.

(c)[2-] Nursing personnel shall:

1. Be taught rehabilitative nursing measures; and

2. Provide rehabilitative nursing care to residents daily, such as[shall practice them in their daily care of patients. These measures shall include]:

a. Maintaining good body alignment and proper positioning of bedfast residents[patients];

b. Encouraging and assisting bedfast residents[patients] to change positions at least every two (2) hours, day and night, to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep residents[patients] active and out of bed for reasonable periods of time, except if[when] contraindicated by physician's orders[; and]

d. Encouraging residents[patients] to achieve independence in activities of daily living by teaching self-care[self-care], transfer, and ambulation activities;

e.[d.] Assisting residents[patients] to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary; and

f.[e-] Assisting residents[patients] to carry out prescribed physical therapy exercises between visits of the physical therapist.

(4)[(e)] Dietary supervision.

(a) Nursing personnel shall assure that each resident is[patients are] served a diet[diets] as prescribed.

(b) A resident in need of[Patients needing] help [in-]eating shall be assisted promptly upon receipt of meals.

(c) Food and fluid intake [of patients-]shall be observed and deviations from normal shall be reported to the charge nurse.

(d) Persistent unresolved problems shall be reported to the physician.

(5)[(d)] Nursing care plan.

(a) There shall be a written nursing care plan[plans] for each resident[patient] based on the:

1. Nature of illness[;]

2. Treatment prescribed[;]

3. Long and short term goals; and

4. Other pertinent information.

(b)[(1-)] The nursing care plan shall:

1. Be a personalized, daily plan for the resident[;individual patients. It shall]

2. Indicate the resident's[what] nursing care needs, including[is needed,]

a. How the nursing care[it] can best be accomplished for the resident;

b. The resident's[each patient, what are the patients] preferences[; what]

c. Methods and approaches that are most successful[;] and

d. Any[what] modifications that are necessary to ensure[insure] best results[;]

3.[2-] [Nursing care plans shall] Be available for use by all nursing personnel; and[;]

4.[3-] [Nursing care plans shall] Be reviewed and revised as needed.

(c)[(4-)] Relevant nursing information from a resident's[the] nursing care plan shall be included with other medical information if the resident is[when patients are] transferred.

(6)[(3)] Specialized rehabilitative services.

(a) Rehabilitative services shall:

1. Be provided upon written order of the physician;

2. Indicate the[which indicates] anticipated goals; and

3. Prescribe[prescribes] specific modalities to be used, including[ and] frequency of physical, speech, or[and] occupational therapy services.

(b) Therapy services [shall-]include:

1. Physical therapy[; -which includes:]

[a-] [Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;]

[b-] [Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity-]

2. Speech therapy; and[ -which includes:]

[a-] [Service in speech pathology or audiology;]

[b-] [Cooperation in the evaluation of patients with speech, hearing, or language disorders;]

[c-] [Determination and recommendation of appropriate speech and hearing services.]

3. Occupational therapy[ -services which include:]

[a-] [Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;]

[b-] [Guiding the patient in his use of therapeutic creative and self care activities for improving function].

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the resident's[patient's] total plan of care.

(d) [Ambulation and therapeutic equipment-]Commonly used ambulation and therapeutic equipment necessary for services [offered-]shall be available, including:

1. [for use in the facility such as-]Parallel bars[;]

2. Hand rails[;]

3. Wheelchairs[;]

4. Walkers[;]

5. Walkerettes[;]

6. Crutches; and

7. Canes.

(e) [The-]Therapists shall advise the administrator concerning the purchase, rental, storage, and maintenance of equipment and supplies.

(7)[(4)] Personal care services. Personal care services shall include[-] assistance with:

(a) Bathing[;]

(b) Shaving[;]

(c) Cleaning and trimming of fingernails and toenails[;]

(d) Cleaning of the mouth and teeth[;] and

(e) Washing, grooming, and cutting of hair.

(8)[(5)] Pharmaceutical services.

(a) The facility shall provide pharmaceutical services, including[appropriate methods and] procedures that ensure[assure] the accurate acquiring, receiving,[for obtaining-] dispensing, and administering of all drugs and biologicals to meet the needs of each resident[, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists].

(b) [If] The facility shall employ or obtain the services of[has a pharmacy department,] a licensed pharmacist who shall:

1. Provide consultation on all aspects of the provision of pharmacy services in the facility;

2. Establish a system of records of receipt and disposition of all

controlled drugs in sufficient detail to enable an accurate reconciliation;

3. Determine that drug records are in order; and

4. Ensure that an account of all controlled drugs is maintained and reconciled~~[be employed to administer the department].~~

(c) If the facility does not have a pharmacy department, it shall ensure that~~[have provision for promptly obtaining]~~ prescribed drugs and biologicals may be obtained from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy~~[,]~~ pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but maintains~~[does maintain]~~ a supply of drugs~~[,]~~

~~[4-]~~ the consultant pharmacist shall:

1. Be responsible for the control of all bulk drugs;~~[and]~~

2. Maintain records of the~~[their]~~ receipt and disposition of bulk drugs;~~[and]~~

3.~~[2-]~~ ~~[The consultant pharmacist shall]~~ Dispense drugs from the drug supply, properly label them, and make them available to appropriate licensed nursing personnel.

~~[3-]~~ ~~[Provisions shall be made for emergency withdrawal of medications from the drug supply.]~~

(e) A facility that stores and administers non-controlled substances in an emergency medication kit (EMK) shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

(f) A facility that stores and administers non-controlled substances from a long-term care facility drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(a)~~[An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used].~~

~~(9)~~~~(f)~~ Medication services.

~~(a)~~~~[4-]~~ Medication administered to a resident~~[All medications administered to patients]~~ shall be ordered in writing by the prescribing:

1. Physician; or

2. Health care practitioner as authorized by the scope of practice~~[, advanced practice registered nurse as authorized in KRS 314.011(8) and 314.042(8), therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2), or physician assistant as authorized in KRS 311.560(3) and (4)].~~

(b) If an order is received by telephone, the order~~[orders]~~ shall be:

1. Recorded in the resident's medical record; and

2. Signed by the physician or other health care practitioner as authorized under the practitioner's scope of practice within fourteen (14) days~~[ given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician, advanced practice registered nurse, therapeutically-certified optometrist, or physician assistant within forty-eight (48) hours].~~

(c) If an order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician or prescribing practitioner that the medication will be stopped at a certain date unless the medication order is continued~~[ Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders].~~

(d) A registered nurse or pharmacist shall review each resident's~~[patient's]~~ medication profile at least monthly.

(e) The prescribing physician or other prescribing practitioner shall review the resident's medication~~[patient's medical]~~ profile at least every two (2) months.

(f) The facility shall release medications to a resident who is discharged upon~~[The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the] written authorization of the physician or prescribing practitioner.~~

~~(10)~~~~[2-]~~ Administration of medications.

(a) A licensed health professional may:

1. Administer medications as authorized under the professional's scope of practice; or

2. Delegate medication administration tasks in accordance with paragraph (b) of this subsection.

(b) A facility may allow an unlicensed staff person to administer medication in accordance with KRS 194A.705(2)(c) and 201 KAR 20:700 as follows:

1. Medication administration is delegated to the unlicensed staff person by an available nurse;

2. If administration of oral or topical medication is delegated, the unlicensed staff person shall have:

a. Certified medication aide (CMA) I credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN); or

b. Kentucky medication aide credential from the Kentucky Community and Technical College System; and

3. If administration of a preloaded insulin injection is delegated, the unlicensed staff person shall have a CMA II credential from a training and skills competency evaluation program approved by KBN~~[All medications shall be administered by licensed medical or nursing personnel in accordance with KRS 314.530 to 314.620 and Chapter 314 or by personnel who have completed a state approved training program from a state approved training provider. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel].~~

(c) An intramuscular injection~~[injections]~~ shall be administered by a licensed nurse or ~~[a-]~~ physician.

(d) If an intravenous injection is~~[injections are]~~ necessary, the injection~~[they]~~ shall be administered by a licensed physician or registered nurse.

(e) Each medication~~[dose]~~ administered shall be recorded in the resident's medical record.

(f)~~[a-]~~ The nursing station shall have readily available items necessary for the proper administration of medications.

~~(g)~~~~[b-]~~ The facility shall ensure that~~[n- administering medications, medication cards or other appropriate system is]~~~~[state approved systems shall be]~~ used and checked against the ~~[physician's-]~~ orders of a physician or practitioner acting under the scope of practice.

(h)~~[e-]~~ A medication that is~~[Medications]~~ prescribed for one (1) resident~~[patient]~~ shall not be administered to any other resident~~[patient]~~.

~~(i)~~~~[d-]~~ A resident shall not be allowed to self-administer a medication~~[Self-administration of medications by patients shall not be permitted]~~ except:

1. On special order of the resident's~~[patient's]~~ physician or prescribing practitioner; or

2. In a discharge program under the supervision of a licensed nurse.

(j) The facility shall assure that a medication error or drug reaction is:

1.~~[e-]~~ ~~[Medication errors and drug reactions shall be]~~ Immediately reported to the resident's~~[patient's]~~ physician or practitioner; and

2. Documented in the resident's~~[an entry thereof made in the patient's] medical record and in~~~~[as well as on]~~ an incident report.

(k)~~[f-]~~ Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references);

~~[3-]~~ ~~[Labeling and storing medications.]~~

~~[a-]~~ All resident medications shall be plainly labeled with the:

1. Resident's~~[patient's]~~ name~~[, the]~~

2. Name of the drug;~~[]~~

3. Strength;~~[]~~

4. Name of the pharmacy;~~[,]~~

5. Prescription number;~~[,]~~

6. Date;~~[,]~~

7. Prescriber's~~[physician]~~ name; and~~[,]~~

8. Caution statements and directions for use, unless a~~[except where accepted]~~ modified unit dose distribution system ~~is~~~~[systems]~~

conforming to federal and state laws are used.

(l) All [The] medications [of each patient shall be] kept by the facility shall be: [and]

1. Stored in their original containers; and
2. [transferring between containers shall be prohibited. All medicines kept by the facility shall be.] Kept in a locked place.

(m) The facility shall ensure that:

1. All [and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key.] medications requiring refrigeration are [shall be] kept in a separate locked box of adequate size in the refrigerator in the medication area; [-]

2. Drugs for external use are [shall be] stored separately from those administered by mouth and injection; [-]

3. [Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.]

[b.] Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels are [shall be] returned to the issuing pharmacist or pharmacy for relabeling or disposal; [-]

4. Containers with [having] no labels are appropriately [shall be] destroyed [in accordance with state and federal laws]; [-]

5. [c.] Cabinets are well-lighted [shall be well lighted] and of sufficient size to permit storage without crowding; and [-]

6. [d.] Expired medications and medications no longer in use are [shall be] disposed of or destroyed appropriately [in accordance with federal and state laws and regulations.].

[e.] [Medications having an expiration date shall be removed from usage and properly disposed of after such date].

(11) [4.] Controlled substances.

(a) Controlled substances shall be kept under double lock, for example [e.g.,] in a locked box in a locked cabinet, and keys or access to the locked box and locked cabinet shall be accessible to designated staff only [)].

(b) A nurse may delegate administration of a regularly scheduled controlled substance to a CMA if the medication has been prescribed and labeled in a container for a specific resident.

(c) For a controlled substance ordered on a PRN basis, a nurse may delegate administration to a CMA if:

1. The medication has been prescribed and labeled in a container for a specific resident;

2. The nurse assesses the resident, in person or virtually, prior to administration of the PRN controlled substance;

3. The nurse assesses the resident, in person or virtually, following the administration of the PRN controlled substance; and

4. The nurse documents administration of the PRN controlled substance by a CMA in the resident's record.

(d) There shall be a controlled substances bound record book with numbered pages that includes: [-, in which is recorded]

1. The name of the resident; [patient, the]

2. Date, time, kind, dosage, [balance remaining] and method of administration of each [all] controlled substance [substances]; [- the]

3. Name of the physician or practitioner who prescribed the medications; and

4. Name of the:

a. Nurse or CMA [the name of the nurse] who administered the controlled substance; [it,] or

b. Staff member who supervised the self-administration.

(e) A staff member with access to controlled substances [In addition, there] shall be responsible for maintaining a recorded and signed:

1. Schedule II controlled substances count daily; [-] and

2. Schedule III, IV, and V controlled substances count at least one (1) time [once] per week [by those persons who have access to controlled substances]. [All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with 21 C.F.R. 1307.21.]

(f) All expired or unused controlled substances shall be disposed of, or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:

1. After expiration of the medication; or

2. From the date the medication was discontinued.

(g) If controlled substances are destroyed on-site:

1. The method of destruction shall render the drug unavailable and unusable;

2. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and

3. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the:

a. Date of destruction;

b. Resident name;

c. Drug name;

d. Drug strength;

e. Quantity;

f. Method of destruction;

g. Name of the person responsible for the destruction; and

h. Name of the witness.

(h) A facility that stores and administers controlled substances in an emergency medication kit (EMK) shall comply with the:

1. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), and (7) through (9); and

2. Limitation on the number and quantity of medications established by 902 KAR 55:070, Section 2(6).

(12) [5.] Use of restraints.

(a) [a.] Chemical and physical restraints [No restraints] shall not be used, except as authorized [permitted] by KRS 216.515(6).

[b.] [b.] Restraints that require lock and key shall not be used.

[c.] [c.] Emergency use of a restraint [Restraints] shall be applied only by appropriately trained personnel if:

1. A resident poses an imminent risk of harm to self or others; and

2. The emergency restraint is the least restrictive intervention to achieve safety.

(d) [d.] Restraints shall not be used as: [- a]

1. Punishment; [- as]

2. Discipline; [- as]

3. A convenience for [the] staff; [-] or

4. Retaliation [as a mechanism to produce regression].

(13) [6.] Infection control [and communicable diseases].

[a.] [a.] There shall be written infection control policies that address [-, which are consistent with the Centers for Disease Control guidelines including]:

1. [(i)] [Policies which address] The prevention of disease transmission; and [- to and from patients, visitors and employees, including: universal blood and body fluid precautions, precautions for infections which can be transmitted by the airborne route, and work restrictions for employees with infectious diseases.]

2. [(ii)] [Policies which address the] Cleaning, disinfection, and sterilization methods used for equipment and the environment.

[b.] [b.] The facility shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections for all personnel responsible for direct [patient] care.

(14) [e.] Sharp wastes.

[a.] [(i)] Sharp wastes [- including needles, scalpels, razors, or other sharp instruments used for patient care procedures,] shall be segregated from other wastes and placed in puncture-resistant [puncture-resistant] containers immediately after use.

[b.] [(ii)] A needle or other contaminated sharp [Needles] shall not be recapped [- by hand], purposely bent [- or] broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Centers for Disease Control and Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

[c.] [(iii)] A sharp waste container shall [The containers of sharp wastes shall either] be incinerated on or off-site [off-site], or be rendered nonhazardous [- by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services and the Natural Resources and Environmental Protection Cabinet].

[d.] Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.

(15) [d.] Disposable waste.

[a.] [(i)] [All] Disposable waste shall be:

1. Placed in a suitable bag [bags] or closed container [containers] so as to prevent leakage or spillage; [-] and [- shall be]

2. Handled, stored, and disposed of in such a way as to minimize

direct exposure of personnel to waste materials.

(b)(iii) The facility shall establish specific written policies regarding handling and disposal of all waste material[wastes].

(iii) [The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.]

(iv) [Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations.]

(16) Infectious or communicable diseases.

(a) [e-] An individual[Patients] infected with one (1) of the following diseases shall not be admitted to the facility:

1. Anthrax;[;]
2. Campylobacteriosis;[;]
3. Cholera;[;]
4. Diphtheria;[;]
5. Hepatitis A;[;]
6. Measles;[;]
7. Pertussis;[;]
8. Plague;[;]
9. Poliomyelitis;[;]
10. Rabies (human);[;]
11. Rubella;[;]
12. Salmonellosis;[;]
13. Shigellosis;[;]
14. Typhoid fever;[;]
15. Yersiniosis;[;]
16. Brucellosis;[;]
17. Giardiasis;[;]
18. Leprosy;[;]
19. Psittacosis;[;]
20. Q fever;[;]
21. Tularemia; or[, and]
22. Typhus.

(b)[f-] A facility may admit a noninfectious[(noninfectious)] tuberculosis resident in accordance with 902 KAR 20:200, Section 4 or Section 8(5)[patient under continuing medical supervision for his tuberculosis disease].

(c)[g-] A resident with symptoms or an abnormal chest x-ray consistent with tuberculosis shall be isolated and evaluated in accordance with 902 KAR 20:200, Section 6(4)[Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet].

(d)[h-] If a resident[- after admission, a patient] is suspected of having a communicable disease that would endanger the health and welfare of other residents[patients], the administrator or administrator's designee shall:

1. Contact[- assure that] a physician;[- is contacted] and
2. Ensure that appropriate measures are taken on behalf of the resident, other residents, and staff[patient with the communicable disease and the other patients].

(17) Laboratory, radiology, and other diagnostic services.

(a) Laboratory services.

1. The facility shall provide or obtain laboratory services to meet the needs of its residents from a laboratory that is:

- a. Part of a hospital; or
- b. Licensed in accordance with KRS 333.030.

2. The facility shall provide or obtain laboratory services if ordered by a physician or other health care practitioner acting within the practitioner's scope of practice.

3. The facility shall:

a. Assist the resident in making transportation arrangements to and from the source of service, if applicable; and

b. File in the resident's record a copy of each laboratory report with the:

- (i) Date of the service; and
- (ii) Name and address of the testing laboratory.

(b) Radiology and other diagnostic services. The facility shall:

1. Provide or obtain radiology and other diagnostic services if ordered by a physician or other health care practitioner acting within the practitioner's scope of practice;

2. Assist the resident in making transportation arrangements to and from the source of service, if applicable; and

3. File in the resident's record a copy of the signed and dated report of x-ray and other diagnostic services.

(18)[(6)] [The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and administrative regulations. All diagnostic services shall be provided only on the written order of a physician, advanced practice registered nurse as authorized in KRS 314.011(8) and 314.042(8), therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2), or physician assistant as authorized in KRS 311.560(3) and (4). The physician, advanced practice registered nurse, therapeutically-certified optometrist, or physician assistant shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.]

(7) Dental services.

(a) The facility shall assist residents in obtaining [patients to obtain] regular and emergency dental care.

(b) A [Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory] dentist shall:

1. Provide consultation;[;]
2. Participate in in-service education;[;]
3. Recommend policies concerning oral hygiene;[;] and [shall]
4. Be available in case of emergency.

(c) If [The facility, when] necessary, the facility shall arrange for the resident[patient] to be transported to the dentist's office.

(d) Nursing personnel shall assist the resident with carrying[patient to carry] out the dentist's recommendations.

(19)[(8)] Social services. [Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.]

(a) The facility shall provide social services to:

1. Meet the medically-related social service needs of each resident;
2. Meet the physical, mental, and psycho-social well-being of each resident; and
3. Assist each resident in attaining or maintaining the highest practicable level of functioning.

(b)[-] Upon admission, the facility shall evaluate a resident's need for social services [As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.]

[2-] [As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care].

(c)[3-] If the resident appears eligible for financial assistance necessary to remain in the facility, the facility shall make a referral for a full evaluation of need [Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency].

(d) The facility shall take appropriate action to obtain any needed social services to help resolve issues related to a resident's:

1. [4-] Illness; [Social and emotional factors related to the patient's illness, to his]
2. Response to treatment; or [- and to his]
3. Adjustment to care in the facility [- shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas].

(e)[5-] The facility shall consider factors such as a resident's [Knowledge of the patient's] home situation, financial

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resources, community resources [available to assist him], and [pertinent] information related to the resident's [his] medical and nursing care needs in any [requirements shall be used in making] decisions regarding [his] discharge from the facility.

(f) [(b)] [Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information. 1.] The staff member responsible for coordinating social services shall:

1. Participate in clinical staff conferences; [and]
2. Confer with the attending physician and nurses [at intervals] during the resident's [patient's] stay in the facility; and [and there shall be evidence in the record of such conferences.]

[2.] [The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.]

3. Include [Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient.] signed social service summaries in the resident's [shall be entered promptly in the patient's] medical record [for the benefit of all staff involved in the care of the patient].

(20) [(9)] Patient activities.

(a) The facility shall provide activities as an adjunct to the active treatment program.

(b) Activities shall:

1. Be suited to the needs and interests of residents; and
2. [patients shall be provided as an important adjunct to the active treatment program] [and to] Encourage restoration of [to] self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients].

(c) [(a)] The activity leader shall use [to the fullest possible extent,] community, social, and recreational opportunities to the fullest extent possible.

(d) [(b)] Residents [Patients] shall be encouraged but not forced to participate in [such] activities.

(e) The facility shall provide suitable activities for residents who are [provided for patients] unable to leave their rooms.

(f) [(e)] The facility shall permit, and assist if needed, residents [Patients] who are able and [who] wish to [do so shall be assisted to] attend religious services.

(g) [(d)] The facility shall honor a resident's [Patients] request to see their clergymen or church leader and provide [shall be honored and] space [shall be provided] for privacy during visits.

(h) [(e)] The facility shall assure that visiting hours are established in accordance with KRS 216.537 and 216.540 [shall be flexible and posted to permit and encourage visiting friends and relatives].

(i) [(f)] The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of residents, such as:

1. [patients. Examples of such supplies and equipment are:] Books and magazines; [.]
2. Daily newspapers; [.]
3. Games; [.]
4. Stationery; [.]
5. Radio and television; and
6. Craft and hobby supplies [the like].

(21) [(40)] Transportation.

(a) If transportation of residents [patients] is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for each resident [patients] who uses a wheelchair [use wheelchairs].

2. An escort or assistant to the driver shall accompany a resident or residents [be provided in transporting patients to and from the facility] if necessary, to help ensure [for the patient's] safety during transport.

(b) The facility shall arrange for appropriate transportation in

case of a medical emergency [emergencies].

(22) [(44)] Dietary [Residential] services.

(a) [Dietary services.] The facility shall provide or contract for food services [service] to meet the dietary needs of the residents, [patients] including:

1. Modified diets; or
2. Dietary restrictions as prescribed by the attending physician.

(b)

1. If [When] a facility contracts for food services [service] with an outside food management company, the company shall provide a licensed dietitian [qualified] [dietician or certified nutritionist] on a full-time, part-time, or consultant basis to the facility.

2. The licensed dietitian [qualified] [dietician or certified nutritionist] shall make recommendations to [have continuing liaison with] the facility's medical and nursing staff [of the facility for recommendations] on dietetic policies affecting resident [patient] care.

3. The food management company shall comply with the [all of the appropriate requirements for] dietary services requirements of this subsection [in this administrative regulation].

(c) [(4.)] [Therapeutic diets.] If the facility provides therapeutic diets and the staff member responsible for the food services is not a licensed dietitian [dietician or certified nutritionist], the responsible staff person shall consult with a licensed dietitian [designated person responsible for food service is not a qualified] [dietician or certified nutritionist] [consultation by a qualified dietitian or qualified nutritionist shall be provided].

(d) The facility shall:

1. [(2.)] Have [Dietary staffing. There shall be] sufficient number of food service personnel;

2. Ensure that the food service staff schedules are [employed and their working hours, schedules of hours, on duty and days off shall be] posted; and [.]

3. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety, or time required for regular dietary assignments.

(e) [(3.)] Menu planning.

1. [(a.)] Menus shall be planned, written, and rotated to avoid repetition.

2. The facility shall meet the nutrition needs of residents in accordance with a [shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with] physician's orders.

3. Except as established in subparagraph 5. of this paragraph, [b.] meals shall correspond with the posted menu.

4. Menus shall [must] be planned and posted one (1) week in advance.

5. If [When] changes in the menu are necessary; [.]

a. Substitutions shall provide equal nutritive value; [and]

b. The changes shall be recorded on the menu; and [all]

c. Menus shall be kept on file for at least thirty (30) days.

6. [(c.)] [The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietitian shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conference.]

[4.] Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced, palatable meals.

b. A record [Records] of food purchased for preparation shall be on file for thirty (30) days.

c. [(b.)] Food shall be prepared with consideration for any individual dietary requirement.

d. Modified diets, nutrient concentrates, and supplements shall be given only on the written orders of a:

(i) Physician; [.]

(ii) Advanced practice registered nurse; [as authorized in KRS 314.011(8) and 314.042(8);] or

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(iii) Physician assistant~~[as authorized in KRS 311.560(3) and (4)].~~

~~e. [c.] At least three (3) meals per day shall be served with not more than a fourteen (14) [fifteen (15)] hour span between the substantial evening meal and breakfast.~~

~~f. Between-meal snacks and beverages, including [to include] an evening snack before bedtime, shall be available at all times for each resident, unless [offered to all patients. Adjustments shall be made when] medically contraindicated as documented by a physician in the resident's record [indicated].~~

~~g. [d.] Foods shall be:~~

~~(i) Prepared by methods that conserve nutritive value, flavor, and appearance; and~~

~~(ii) [shall be attractively—] Served at the proper temperature [temperatures,] and in a form to meet [the] individual needs.~~

~~h. A file of tested recipes, adjusted to appropriate yield, shall be maintained.~~

~~i. Food shall be cut, chopped, and ground to meet individual needs.~~

~~j. If a resident [patient] refuses foods served, nutritional substitutions shall be offered.~~

~~k. [e.] All opened containers or left over food items shall be covered and dated when refrigerated.~~

~~7. [5.] Serving of food.~~

~~a. If a resident [When a patient] cannot be served in the dining room, trays shall:~~

~~(i) Be provided for bedfast patients; and [shall]~~

~~(ii) Rest on firm supports such as overbed tables.~~

~~b. Sturdy tray stands of proper height shall be provided for residents [patients] able to be out of bed.~~

~~c. [a.] Direct care staff shall be responsible for correctly positioning a resident to eat meals served on a tray [Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff].~~

~~d. A resident who requires help with [Patients requiring help in] eating shall be assisted within a reasonable length of time.~~

~~e. [b.] The facility shall provide adaptive feeding equipment if needed by a resident [self-help devices shall be provided to contribute to the patient's independence in eating].~~

~~f. [6.] Food services shall be provided in accordance with [Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and] 902 KAR 45:005.~~

~~(23) [(b)] Housekeeping and maintenance services.~~

~~(a) [1.] The facility shall:~~

~~1. Maintain a clean and safe facility free of unpleasant odors; and~~

~~2. Ensure that [.] odors are [shall be] eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other [obvious—] sources.~~

~~(b) The facility shall:~~

~~1. [2.] Have available at all times an adequate supply of clean linen essential to the proper care and comfort of residents;~~

~~2. Ensure that [shall be on hand at all times.] soiled clothing and linens [shall] receive immediate attention and [shall] not be allowed to accumulate;~~

~~3. Ensure that [.] clothing and linens [or bedding] used by one (1) resident [patient] shall not be used by another resident unless [until] it has been laundered or dry cleaned; and [.]~~

~~4. [3.] Ensure that soiled clothing and linens [linen] shall be:~~

~~a. Placed in washable or disposable containers; [.]~~

~~b. Transported in a sanitary manner; and~~

~~c. Stored in separate, well-ventilated areas in a manner to prevent contamination and odors.~~

~~(c) Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.~~

~~(d) [4.] Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area.~~

~~(e) Hand-washing facilities with hot and cold water, soap dispenser, and paper towels shall be provided in the laundry area.~~

~~(f) [5.] Clean linen shall be sorted, dried, ironed, folded, transported, stored, and distributed in a sanitary manner.~~

~~(g) [6.] Clean linen shall be stored in clean linen closets on each~~

floor, close to the nurses' station.

~~(h) [7.] Personal laundry [of patients or staff] shall be:~~

~~1. Collected, transported, sorted, washed, and dried in a sanitary manner; [.] separate from bed linens; [.]~~

~~2. [8.] [Patients' personal clothing shall be] Laundered as often as [is] necessary; [.]~~

~~3. [Laundering of patients' personal clothing shall be] The responsibility of the facility unless the resident or resident's [patient or the patient's] family accepts this responsibility; and [.]~~

~~4. [Patient's personal clothing laundered by or through the facility shall be—] Marked or labeled to identify the resident so that it may be [patient owner and] returned to the correct resident [patient].~~

~~(24) [9.] Maintenance. The premises shall be well kept and in good repair as established in this subsection. [Requirements shall include:]~~

~~(a) [a.] The facility shall ensure [insure] that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair.~~

~~(b) [b.] The interior of the building, including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures, shall be in good repair. Windows and doors shall be screened.~~

~~(c) [c.] Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.~~

~~(d) [d.] A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.~~

~~(25) [(e)] Room accommodations.~~

~~(a) A facility shall provide each resident with:~~

~~1. A bed that is [Each patient shall be provided a standard size bed or the equivalent] at least thirty-six (36) inches wide;~~

~~2. [.] equipped with substantial springs, [.] A clean, comfortable mattress with a support mechanism; [.]~~

~~3. A mattress cover; [.]~~

~~4. Two (2) sheets and a pillow; [.] and [such]~~

~~5. Bed covering [as is required—] to keep the resident [patients] comfortable.~~

~~(b) Each bed [Rubber or other impervious sheets shall be placed over the mattress] [cover whenever necessary. Beds occupied by patients] shall be placed so that a resident does not [no patient may] experience discomfort because of proximity to a radiator, heat outlet, or [radiators, heat outlets, or by] exposure to drafts.~~

~~(c) [2.] The facility shall provide:~~

~~1. Window coverings; [.]~~

~~2. Bedside tables with reading lamps, [.] [if appropriate,]; [.]~~

~~3. Comfortable chairs; [.]~~

~~4. A chest or dresser with a mirror for each resident;~~

~~5. [dressers with mirrors,] A night light; [.] and~~

~~6. Storage space for clothing and other possessions.~~

~~(d) [3.] A resident [Patients] shall not be housed in a room, detached building, or other enclosure that has not been previously inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction [unapproved rooms or unapproved detached buildings].~~

~~(e) [4.] Basement rooms shall not be used for sleeping rooms for residents [patients].~~

~~(f) [5.] Residents [Patients] may have personal items and furniture, if [when it is physically] feasible; [.]~~

~~[6.] [There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room].~~

~~(26) Living and dining area.~~

~~(a) [7.] Each living room or lounge area and recreation area shall have an adequate number of:~~

~~1. Reading lamps; [.] and~~

~~2. Tables and chairs or settees of sound construction and satisfactory design.~~

~~(b) [8.] Dining room furnishings shall be adequate in number, well constructed, and of satisfactory design for the patients.~~

~~[9.] [Each patient shall be permitted to have his own radio and~~



television set in his room unless it interferes with or is disturbing to other patients.

DAVID T. LOVELY, Acting Inspector General  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 13, 2024

FILED WITH AGENCY: March 14, 2024

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Valerie Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum licensure requirements for the operation of and services provided by nursing homes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042, which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing standards for licensed nursing 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 standards for licensed nursing homes.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires unlicensed staff who administer medications to nursing home residents under the delegation of a nurse to be a certified medication aide (CMA) I or Kentucky medication aide, or be a CMA II. This amendment also makes technical changes to comply with the drafting requirements of KRS Chapter 13A to help improve clarity and flow. Other needed updates include the addition of: 1. A cross-reference to KRS 216.532 to ensure compliance with the requirement nurse aide and home health aide abuse registry checks; 2. A cross-reference to KRS 209.030 to ensure compliance with the requirement for caregiver misconduct registry checks; 3. A cross-reference to KRS 216.789 and 216.793 to ensure compliance with the requirement for criminal background checks; 4. New language related to the confidentiality and security of resident records to ensure compliance with the Health Insurance Portability and Accountability Act of 1996; 5. New language that aligns with the requirements of 201 KAR 2:370 regarding the storage and administration of medications from emergency medication kits; and 6. New language to allow a CMA to administer controlled substances under the delegation of a nurse, including a controlled substance ordered on a PRN basis under certain conditions. The Amended After Comments version deletes "certified nutritionist" and all references throughout the regulation. The amendment corrects spelling from "dietician" to industry standard "dietitian".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the 2023 passage of SB 110, which amended KRS 194A.705(2)(c) to require all long-term care facilities that provide basic health and health-related services or dementia care services to ensure that unlicensed staff who administer oral or topical medications, or preloaded injectable insulin to residents under the delegation of a nurse to have successfully completed a medication aide training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 194A.705(2)(c) because the statute applies to all long-term care

facilities, including nursing homes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing standards that align with the statutory requirements for licensed nursing homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed nursing homes. Currently, there are 27 nursing homes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Nursing homes must ensure that unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a CMA I or Kentucky medication aide, or be a CMA II to administer preloaded injectable insulin to residents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this amendment because nursing homes already use certified medication aides.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The use of properly trained and competent certified medication aides leads to fewer errors with drug use and medication administration, thereby helping ensure fewer negative outcomes for residents. Moreover, this amendment expands the scope of certified medication aides by allowing them to administer preloaded injectable insulin if they have a CMA II credential. CMAs are currently restricted to administering oral and topical medications.

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

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal funds and state matching funds of general and agency appropriations.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all nursing homes regulated by it.

#### FISCAL NOTE

(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 Cabinet for Health and Family Services, Office of Inspector General, and licensed nursing homes.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

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

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation imposes no additional costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation imposes no additional costs on regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment is not expected to have a major economic impact on the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 21 C.F.R. Part, 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8

(2) State compliance standards. KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate. 21 C.F.R. Part 1317 sets forth the Drug Enforcement Administration's rules for the safe disposal and destruction of damaged, expired, returned, recalled, unused, or otherwise unwanted controlled substances. 29 C.F.R. 1910.1030(d)(2)(vii) establishes universal precautions for preventing contact with blood or other potentially infectious materials. 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information. In accordance with KRS 194A.705(2)(c) and 201 KAR 20:700, this amendment requires nursing homes to ensure that any unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a certified medication aide I or Kentucky medication aide, or be a certified medication aide II to administer preloaded injectable insulin to residents.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose requirements that are more strict than federal laws or

regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of Inspector General**  
**Division of Health Care**  
**(Amended After Comments)**

**902 KAR 20:086. Operation and services; intermediate care facilities for individuals with intellectual disabilities[the mentally retarded and developmentally disabled].**

RELATES TO: KRS 194A.705(2)(c), 209.030, 209.032, 216.510 – 216.525, 216.532, 216.789, 216.793, 216A.080, 310.031, 315.035, 620.030, 21 C.F.R. Part 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 34 C.F.R. 300.8(c)(6), 42 C.F.R. 483.400 – 483.480, 45 C.F.R. 1325.3, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8[216B.010-216B.131, 216B.990(1), (2), 222.210 et. seq.]

STATUTORY AUTHORITY: KRS 216B.042[-, 216B.105]

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[mandates that the Kentucky Cabinet for Human Resources regulate] health facilities and health services. This administrative regulation establishes minimum[provides] licensure requirements for the operation and services provided by intermediate care facilities for individuals with intellectual disabilities (ICF/IID)[of intermediate care facilities for the mentally retarded/developmentally disabled (MR/DD)].

Section 1. Definitions.

(1) "Active treatment" means the delivery of resident-specific specialized and generic training, treatment, health services, and related services directed toward the:

(a) Acquisition of behaviors necessary for the resident to function with as much self-determination and independence as possible; and

(b) Prevention or deceleration of regression or loss of current optimal functional status.[daily participation, in accordance with an individual plan of care and service, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or rehabilitative services offered by or procured by contract or other written agreement by the institution for its residents.]

(2) "Administrator" means a person who has a license to practice long-term care administration[is licensed as a nursing home administrator] pursuant to KRS 216A.080.

(3) "Aversive stimuli" means things or events that the resident finds unpleasant or painful that are used to immediately discourage undesired behavior.

(4) ["Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.]

[(5)] "Developmental disability" is defined by 45 C.F.R. 1325.3[means a severe chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments manifested before the person attains the age of twenty-two (22) and is likely to continue indefinitely. This disability results in substantial limitations in three (3) or more areas of major life activity including self-care, receptive and expressive language, learning, self-direction, mobility, capacity for independent living and economic sufficiency and requires individually planned and coordinated services of a lifelong or extended duration].

[(5)] [(6)] [(5)] "Developmental nursing services" means treatment of an individual's[a person's developmental] needs by designing interventions to modify the rate or[and/or] direction of the individual's development [especially] in the areas of:

(a) Self-help skills;[;]

(b) Personal hygiene;[;] and

(c) Sex education [while also meeting his physical and medical needs.];

[(6)] ["Facility" means an intermediate care facility for the mentally retarded and the developmentally disabled (MR/DD).];

[(7)] ["Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection].

[(6) [(7)]] "Intellectual disability" is defined by 34 C.F.R. 300.8(c)(6).

[(7) [(8)]] "Interdisciplinary team" means the group of people assembled by the facility who represent the professions, disciplines, or service areas that are relevant to:

(a) Identify the resident's needs; and

(b) Make recommendations for:

1. The resident's individual program plan; and

2. Services designed to meet the resident's needs [persons responsible for the diagnosis, evaluation and individualized program planning and service implementation for the resident. The team is composed of relevant professionals, and may include the resident, the resident's family, or the guardian.];

[(9)] ["License" means an authorization issued by the cabinet for the purpose of offering intermediate care MR/DD services.];

[(10)] ["MR/DD" means the mentally retarded and the developmentally disabled persons].

[(8) [(9)]] [(11)] "Normalization principle" means making available to all people with disabilities patterns of life and conditions of everyday living that are as close as possible to the regular circumstances and ways of life or society [is the utilization of means which are as culturally normative as possible in order to establish and maintain personal behavior and characteristics which are as culturally normative as possible.];

[(12)] ["Qualified dietician or nutritionist" means:];

[(a)] [A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or]

[(b)] [A person who has a masters degree in nutrition and is a member of the ADA or is eligible for registration by ADA; or]

[(c)] [A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.];

[(13)] ["Qualified occupational therapist" means a graduate of a program of occupational therapy approved by the Council on Medical Education of the American Medical Association and licensed in the state, if required.];

[(14)] ["Qualified speech pathologist or audiologist" means a person who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent education and experimental requirements for such a certificate].

[(9) [(10)]] [(15)] "Qualified social worker" means a person who:

(a) Meets the requirements of 42 C.F.R. 483.430(b)(5)(vi); or

(b) Has [is licensed or exempt from licensure pursuant to KRS Chapter 335 with bachelor's degree in social work from an accredited program or] a bachelor's degree in a field other than social work and at least three (3) years of social work experience under the supervision of a [qualified] social worker who meets the requirements of 42 C.F.R. 483.430(b)(vi).

[(10) [(11)]] [(16)] "A qualified intellectual disability [mental retardation] professional (QIDP)" is defined by 42 C.F.R. 483.430(a) [means a person who has specialized training or one (1) year of experience in treating or working with the mentally retarded and/or developmental disabilities and is one (1) of the following:];

[(a)] [A psychologist with a master's degree from an accredited program;];

[(b)] [A licensed physician;];

[(c)] [A educator with a degree in education from an accredited

program;];

[(d)] [A social worker who is licensed or exempt from licensure pursuant to KRS Chapter 335 with a bachelor's degree in:];

[1.] [Social work from an accredited program; or]

[2.] [A field other than social work and at least three (3) years of social work experience under the supervision of a qualified social workers;];

[(e)] [A physical or occupational therapist who is a graduate of a program of physical or occupational therapy approved by the Council on Medical Education of the American Medical Association.];

[(f)] [A speech pathologist or audiologist who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent educational and experimental requirements for such a certificate;];

[(g)] [A registered nurse;];

[(h)] [A therapeutic recreation specialist who is graduate of an accredited program and is licensed in the state, if required, or who has:];

[1.] [A bachelor's degree in recreation, or in a specialty area, such as art, music, or physical education; or]

[2.] [An associate degree in recreation and one (1) year of experience in recreation; or]

[3.] [A high school diploma, or an equivalency certificate; and]

[a.] [Two (2) years of experience in recreation; or]

[b.] [One (1) year of experience in recreation plus completion of comprehensive in-service training in recreation; or]

[4.] [Demonstrated proficiency and experience in conducting activities in one (1) or more recreation program areas; or]

[(i)] [A "rehabilitation/counselor" who is certified by the Committee on Rehabilitation Counselor Certification].

[(11) [(12)]] [(17)] "Restraint" means any pharmaceutical [chemical] agent or [any] physical or mechanical device used to restrict the movement of a portion of an individual's body [an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavioral) treatment].

[(12) [(13)]] [(18)] "Seclusion" means the involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving [the retention of a resident alone in a locked room].

[(19)] ["Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.];

[(20)] ["Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart].

[(13) [(14)]] [(21)] "Time-out" ["Time out"] means a procedure that [which] involves removing an individual [the person] from a reinforcing situation [;] for a period of time if [when] the individual [person] engages in a specified inappropriate behavior.

Section 2. Scope of Operation and Services.

(1) An ICF/IID shall [Intermediate care facilities for mentally retarded and developmentally disabled persons] provide services for all age groups on a twenty-four (24) hour basis, seven (7) days per [a] week [;] in an establishment located in a [with] permanent building with [facilities including] resident beds for individuals with intellectual disabilities or related conditions who require [persons whose mental or physical condition requires] developmental nursing services and [along with] a planned program of active treatment.

(2) The facility shall provide [provides special] programs as indicated by a resident's individual program plan [care plans] to maximize the resident's mental, physical, and social development in accordance with the normalization principle.

(3) The facility shall [intermediate care facilities for the mentally retarded and developmentally disabled must] comply with the facility specification requirements off [specifications for Intermediate Care

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Facilities,] 902 KAR 20:056.

Section 3. Administration and Operation.

(1) Licensee. The licensee shall be legally responsible for:

(a) The operation of the facility; and[-for]

(b) Compliance with federal, state and local laws, and administrative regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who shall[is]

(a) Be responsible for the day-to-day operation of the facility;

(b) Designate one (1) or more staff to act on behalf of the administrator or to perform the administrator's responsibilities in the administrator's[and delegating such responsibility in his] absence; and[-]

(c) [The administrator shall-]Not be the nursing services supervisor.

(3) Contracted services. The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of each resident.[the residents. The contract shall be in writing.]

(4) Administrative records.

(a) The facility shall maintain a [bound, permanent, chronological-]resident registry that documents the:[showing date of admission,]

1. Name of each resident;

2. Date of admission; and

3. Date of discharge.

(b) The facility shall [require and-]maintain written recommendations or comments from consultants regarding the active treatment program and its development on a per visit basis.

(c) The facility shall maintain menu and food purchase records[shall be maintained].

(d)

1. The administrator or administrator's designee shall make a written report of any incident or accident involving a:

a. Resident,[including a medication error[errors] or drug reaction:[reactions,]

b. Visitor; or

c. Staff member.

2. The report shall:

a. Identify[-be made and signed by the administrator or nursing services supervisor, and] any staff member who witnessed the incident; and[-]

b. [The report shall-]Be filed in an incident file.

(5) Policies. The facility shall have[establish] written policies and procedures that govern all services provided by the facility. The [written-]policies shall[include]:

(a) Address resident services, including medical, nursing, habilitation, pharmaceutical[-(including medication stop orders policy)], and residential services;

(b) Require[Adult and child protection. The facility shall have written policies which assure] the reporting of cases of abuse, neglect, or exploitation of adults or[and] children [to the Department for Human Resources-]pursuant to KRS 209.030 or 620.030, including evidence that all allegations of abuse, neglect, or exploitation shall be thoroughly investigated internally to prevent further potential abuse while the investigation is in process[Chapters 209 and 620];

(c) Ensure that residents are:

1. Free from unnecessary drugs and physical restraints; and

2. Provided active treatment to reduce dependency on drugs and physical restraints; and[Use of restraints. The facility shall have a written policy that defines the use of restraints and supportive devices and a mechanism for monitoring and controlling their use; and]

(d) [Missing resident procedures. The facility shall have a written procedure to-]Specify in a step-by-step manner the actions that[which] shall be taken by staff if[when] a resident is [determined to be-]lost, unaccounted for, or on other unauthorized absence.

(6) Resident[Patient] rights. Resident[Patient] rights shall be provided for pursuant to KRS 216.510 to 216.525.

(7) Admission.

(a) A resident of an ICF/IID[Patients] shall:

1. Be admitted only upon the referral[approval] of a physician; and[-]

2. [The facility shall admit only persons who-]Have a [physical or mental-]condition that[which] requires developmental nursing services and a planned program of active treatment.

(b) The interdisciplinary team shall consist of:

1. A physician;[-]

2. A psychologist;[-]

3. A registered nurse;[-]

4. A qualified social worker; and

5. Other professionals, at least one (1) of whom is a QIDP[qualified mental retardation professional].

(c) Prior to admission, the interdisciplinary team shall:

1. Conduct a comprehensive evaluation of the individual no less than ninety (90) days[-, not more than three (3) months] before the date of admission;

2. Assess the individual's[-covering] physical, emotional, social, and cognitive status[factors]; and

3.[2.] Determine[Prior to admission-define] the need for services, including a review of[service without regard to availability of those services. The team shall review] all available[-and applicable] programs of care, treatment, and training[-and record its findings].

(d) Admission decisions shall be made in accordance with 42 C.F.R. 483.440.

(e)[(e)] Upon admission, the facility shall provide[If admission is not the best plan but the individual must be admitted nevertheless, the facility shall clearly acknowledge that the admission is inappropriate and initiate plans to actively explore alternatives;]

[(e)] [Before admission,] the resident and a responsible family member [of his family-]or guardian, if applicable, with written information regarding the facility's policies, including:

1. Services offered and charges;

2. [committee shall be informed in writing of the established policies of the facility and fees, reimbursement, -]Visitation rights during serious illness;[-]

3. Visiting hours; and[-]

4. Type of diets offered,

(f) [and services offered; and]

[(e)] The facility shall [provide and-]maintain a system for:

1. Identifying each resident's personal property; and[-facilities for]

2. Safekeeping [of his declared-]valuables, including assurance that[-] each resident's clothing and other property is[shall be] reserved for the resident's[his] own use.

(8) Discharge planning.[-Prior to discharge]

(a) The facility shall have a discharge planning program which begins at admission and is an integral part of each individual's treatment plan that[postinstitutional plan which-]identifies other settings[the residential setting] and support services that may[which would] enable a[the] resident to live in a less restrictive environment[alternative to the current setting].

(b) If a resident is to be transferred or discharged, the facility shall comply with requirements of 42 C.F.R. 483.440(4) and (5)[Before a resident is released, the facility shall:]

[(a)] [Offer counseling to parents or guardians who requests the release of a resident concerning the advantages and disadvantages of the release;]

[(b)] [Plan for release of the resident, to assure that appropriate services are available in the resident's new environment, including protective supervision and other follow-up services; and]

[(c)] [Prepare and place in the resident's record a summary of findings, progress, and plans].

(9) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of a resident to a higher intensity level of care, if indicated[Residents to other health care facilities which can provide a level of health care not provided by the facility].

(b) A[Any] facility that[which] does not have a transfer agreement in effect, but has attempted in[which documents a] good faith [attempt-]to enter into an agreement shall be considered to be in compliance with the requirements of paragraph (a) of this subsection[licensure requirement].

(c) The facility's transfer procedures and agreements shall:

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1. Specify the responsibilities of each party[institution assumes] in the transfer of a resident[; and shall]

2. Establish responsibility for notifying the other party[institution promptly] of an[the] impending transfer; and[ of a resident and shall]

3. Arrange for appropriate and safe transportation of the resident and resident's files.

(d) Except in cases of emergency, the administrator shall:

1. Initiate a transfer through the resident's physician if the resident's[When the resident's] condition exceeds the scope of services of the facility; or

2. Contract for services[, the resident, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for] from another community resource to meet the resident's needs.

(e)(e) If a resident's condition improves and the resident may be served in a less restrictive environment,[When changes and progress occur which would enable the resident to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility,] the facility shall offer assistance in making arrangements for the resident[residents] to be transferred to a lower intensity level of care[facilities providing appropriate services].

(f)(f) Except in an emergency, the resident, resident's responsible family member[his next of kin], or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge[ of any resident].

(g)(g) If a resident transfers[When a transfer is] to another level of care[ within the same facility], the complete medical record or a current summary of the resident's medical record shall accompany the resident[thereof shall be transferred with the resident].

(h)(h) If the resident is transferred to another health care facility or other community resource, a transfer form shall:

1. Accompany the resident[;]

2. [The transfer form shall] Include the following[at least]:

a. Physician's orders,[if available];[;]

b. Current information regarding the resident's[relative to] diagnosis with a history of any health conditions that require[problems requiring] special care[;]

c. A summary of [the course of] prior treatment, special supplies, or equipment needed for the resident's[resident] care[;] and

d. Pertinent social information on the resident and resident's family.

(10) Medical records.

(a) The facility shall maintain a record for each resident that includes documentation of[fer]:

1. Planning and continuous evaluation of the resident's habilitation program, including evidence of the resident's progress; and

2. Protecting the resident's rights[Furnishing documentary evidence of each resident's progress and response to his habilitation program; and]

[3.] [Protecting the rights of the residents, the facility and the staff].

(b) Each entry in a[All entries in the] resident's record shall be legible, dated, and signed.

(c) Each record shall include:[At the time a resident is admitted, the facility must enter in the individual's record the following information:]

1. Identifying information, including:

a. Resident's name[;]

b. Date of admission[;]

c. Birth date and place of birth[;]

d. Citizenship status[;]

e. Marital status[; and]

f. Social Security number;

g.[2.] Father's name and birthplace[;]

h. Mother's maiden name and birthplace[; and]

i. Parents' marital status;

j.[3.] [Name and] Address of parents, [legal] guardian, or responsible family member,[and next of kin] if applicable[needed]; and

k.[4.] Sex, race, height, weight, color of hair, color of eyes, identifying marks, and recent photograph;

2.[5.] Reason for admission or referral[problem];

3.[6.] Type and legal status of admission;

4.[7.] Legal competency status;

5.[8.] Language spoken or understood;

6.[9.] Sources of support, including Social Security, veterans' benefits, or[and] insurance;

7.[10.] Religious affiliation, if any;

8.[14.] Documentation of[Reports of] the preadmission evaluation[evaluations]; and

9.[12.] Documentation[Reports] of assessments[previous histories] and any other previous evaluations[; if any].

(d) Within thirty (30) days[one (1) month] after [the] admission[ of each resident], the facility shall[ICF/MR must] enter the following in the resident's record:

1. A report of assessments or reassessments performed by the interdisciplinary team to supplement the[the review and updating of the] preadmission evaluation;

2. The resident's specific developmental and behavioral management needs[A prognosis that can be used for programming and placement]; and

3. A comprehensive functional assessment[evaluation] and individual program plan developed[, designed] by the[an] interdisciplinary team.

(e) The facility shall[must] enter the following information in a resident's record[ during his residence]:

1. A written report of any accident, seizure, or illness, and treatment services provided[Reports of accidents, seizures, illnesses, and treatments for these conditions];

2. Documentation[Records] of immunizations;

3. Documentation of the use of any restraint on the resident, including an explanation of[Records of all time periods that restraints were used, with justification] and authorization for the restraint[each];

4. Documentation of the interdisciplinary team's annual[Reports of regular, at least annual,] review and evaluation of the resident's individual program plan, developmental progress, and status[ of each resident];

5. Observations regarding[ of] the resident's response to the individual[his] program plan used to evaluate[ to enable evaluation of] its effectiveness;

6. A record[Records] of significant behavior incidents;

7. Documentation[Records] of family visits and contacts;

8. Documentation of any incident in which the resident is lost, unaccounted for, or on other unauthorized absence[Records of attendance and absences];

9. Correspondence pertaining to the resident;

10. [Periodic] Updates as needed to[ of] the information initially recorded at the time of admission; and

11. A record of any applicable[Appropriate] authorizations or[and] consent.

(f) The facility shall[ICF/MR must] enter a discharge summary in the resident's record at the time of discharge[he is discharged].

(11) Confidentiality and Security: Use and Disclosure.

(a) The facility shall maintain the confidentiality and security of resident records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 through 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, and as provided by applicable federal or state law.

(b) The facility may use and disclose resident records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 through 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

(c) The facility may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(12)[(14)] Personnel.

(a) In accordance with KRS 216.532, an ICF/IID shall not employ or be operated by an individual who is listed on the nurse aide and home health aide abuse registry established by 906 KAR 1:100.

(b) In accordance with KRS 209.032, an ICF/IID shall not employ or be operated by an individual who is listed on the caregiver misconduct registry established by 922 KAR 5:120.

(c) An ICF/IID shall obtain a criminal record check on each applicant for initial employment in accordance with KRS 216.789 and 216.793.

(d) An ICF/IID may participate in the Kentucky National Background Check Program established by 906 KAR 1:190 to satisfy the background check requirements of paragraphs (a) through (c) of this subsection.

(e) A ~~Job descriptions;~~ written job description ~~descriptions~~ shall be developed for each category of personnel, ~~including;~~ ~~to include~~

1. Qualifications; ~~;~~
2. Lines of authority; and
3. Specific duty assignments.

(f) ~~(b)~~ ~~Employee records;~~ Current employee records shall be maintained ~~on each staff member and contain;~~

1. Name and address;

2. Verification of ~~shall include a resume of each employee's~~ training and experience, ~~including evidence of current licensure,~~ ~~or registration, or certification, if applicable;~~

3. ~~Employee~~ ~~where required by law;~~ health records;
4. Annual performance evaluations; and
5. Documentation of compliance with the background check requirements of paragraphs (a) through (c) of this subsection; ~~records of in-service training and ongoing education, and the employee's name, address and Social Security number.~~

(13) ~~(c)~~ Staffing requirements.

(a) Staffing in the facility shall be sufficient in number and qualifications ~~have adequate personnel~~ to meet the personal care, nursing care, supervision, and other needs of each resident ~~the residents~~ on a twenty-four (24) hour basis. ~~The number and classification of personnel required shall be based on the number of residents, the amount and the kind of personal care, nursing care, supervision and program needed to meet the needs of the resident as determined by the interdisciplinary team, and the services required by this administrative regulation.~~

(b) ~~(d)~~ The licensee shall have a QIPD ~~qualified mental retardation professional~~ who is responsible for:

1. Supervising the delivery of each resident's individual program plan ~~of care~~;
2. Supervising the delivery of training and habilitation services;
3. Integrating the various aspects of the ~~facility's~~ ~~facility~~ program;
4. Recording each resident's progress; and
5. Initiating ~~a periodic~~ review of each individual program plan ~~of care~~ for necessary changes.

(c) ~~(e)~~ Each residential ~~resident~~ living unit shall maintain direct care staff-to-resident ratios in accordance with 42 C.F.R. 483.430 ~~(d)~~, regardless of organization or design, must have, as a minimum, overall staff-resident ratios (allowing for a five (5) day work week plus holiday, vacation, and sick time) as follows unless program needs justify otherwise:

[1.] ~~For units serving children under the age of six (6) years, severely and profoundly retarded, severely physically handicapped, or residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall ratio is one (1) to two (2);~~

[2.] ~~For units serving moderately retarded residents requiring habit training, the overall ratio is one (1) to two and five tenths (2.5); and~~

[3.] ~~For units serving residents in vocational training programs and adults who work in sheltered employment situations, the overall ratio is one (1) to five (5).~~

(f) ~~When the staff/resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.~~

(d) ~~(g)~~ A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in case of injury, illness, ~~or~~ fire, or other emergency ~~emergencies~~.

(e) ~~(h)~~ The use of volunteers shall not be:

1. Included in the ~~counted to make up~~ minimum staffing requirements of this subsection; or
2. Relied upon to perform direct care services for the facility.

(14) Nurse staffing.

(a) ~~(4)~~ The facility shall have ~~Supervision of nursing services shall be by~~ a registered nurse or licensed practical nurse ~~during~~ ~~employed on~~ the day shift, seven (7) days per week to supervise nursing services.

(b) The supervising nurse ~~supervisor~~ shall have training and experience in the field of ~~intellectual and developmental disabilities~~ and mental retardation.

(c) ~~If~~ ~~When~~ a licensed practical nurse serves as the supervisor, ~~consultation shall be provided by~~ a registered nurse shall provide consultation ~~preferably with a baccalaureate degree,~~ at regular intervals, not less than four (4) hours weekly.

(d) The supervising nurse's responsibilities ~~of the nursing services supervisor~~ shall include developing and maintaining;

1. Nursing service objectives; ~~;~~
  2. Standards of nursing practice; ~~;~~
  3. Nursing procedure manuals; ~~;~~ and
  4. A written job description for each level of nursing personnel; ~~;~~
- (e) ~~2~~ Nursing service personnel at all levels of experience and competence shall:

1. Be assigned responsibilities in accordance with their qualifications; ~~;~~
2. Delegate tasks as authorized under the nurse's scope of practice; ~~authority commensurate with their responsibility, and~~
3. Provide appropriate professional nursing supervision; and
4. ~~3~~ Participate in the development and implementation of resident care policies.

(15) ~~(4)~~ Each ~~The~~ facility shall retain a licensed pharmacist on a full-time, part-time, or consultant basis to direct pharmaceutical services.

(16) ~~(k)~~ Each facility shall have a full-time staff person designated by the administrator who shall be: ~~;~~

(a) Responsible for the total food service operation of the facility; and

(b) On duty a minimum of thirty-five (35) hours each week.

(17) ~~(4)~~ Each facility shall ensure that supportive personnel, consultants, assistants, and volunteers ~~are~~ ~~shall be~~ supervised and ~~shall~~ function within the policies and procedures of the facility.

(18) ~~(m)~~ An employee who contracts a communicable ~~or~~ health requirements. No employee contracting an infectious disease shall:

- (a) Be immediately excluded from ~~appear at~~ work; and
- (b) Remain off work until cleared as noninfectious by a health care practitioner acting within the practitioner's scope of practice.

(19) All employees of an ICF/IID shall be screened and tested for tuberculosis in accordance with the provisions of 902 KAR 20:205 ~~until the infectious disease can no longer be transmitted. The facility shall comply with the following tuberculosis testing requirements:~~

[1.] ~~The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.~~

[2.] ~~All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly, if symptoms persist.~~

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[3.] [The administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with paragraphs 1 and 2 of this subsection. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.]

[4.] [The following shall be reported by the administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration; names of staff who have a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.]

[5.] [Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered to patients only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis infection every six (6) months during the two (2) years following conversion for a total of five (5) chest x-rays.]

[6.] [Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements].

(20) In-service training.

(a) [The] facility shall have a staff training program adequate for the size and nature of the facility with a staff person who is assigned [designated the] responsibility for staff development and training.

(b) The training program shall include:

1. Orientation to acquaint [for] each new employee [to acquaint him] with the philosophy, organization, program, practices, and goals of the facility;
2. Follow-up [in-service] training for any employee who has not achieved the desired level of competence;
3. Continuing in-service training held at least annually for all employees to update and improve their skills; and
4. Supervisory and management training for each employee who is in, or a candidate for, a supervisory position.

Section 4. Provision of Services.

(1) The [professional] interdisciplinary team shall assure that:

(a) The health needs of each resident [the residents] are met; and

(b) Each resident has an individual program plan developed in accordance with the requirements of 42 C.F.R. 483.440(c) through (f) [that plans are developed for each resident which include treatments, medications, dietary requirements, and other program services. All activities shall reflect adherence to the normalization principle. The active treatment program shall assure:]

(a) [An individual written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences or therapies necessary for the individual to reach those goals or objectives. The plan is to help the individual function at the greatest physical, intellectual, social, or vocational level he can presently or potentially achieve.]

(b) [Regular participation, in accordance with an individualized plan, in a program of activities that are designed to attain the optimum physical, intellectual, social, and vocational functioning of which a resident is capable.]

(c) [Reevaluation medically, socially, and psychologically at least annually by the staff involved in carrying out the resident's individual plan of care. This must include review of the individual's progress toward meeting the plan objectives, the appropriateness of the individualized plan of care, assessment of his continuing need for institutional care, and consideration of alternate methods of care].

(2) Infection control [and communicable diseases].

(a) There shall be written infection control policies that address, which are consistent with the Centers for Disease Control guidelines including):

1. [Policies which address] The prevention of disease transmission [to and from patients, visitors and employees], including:

- a. Universal blood and body fluid precautions;
- b. Precautions for infections that [which] can be transmitted by the airborne route; and
- c. Work restrictions for employees with infectious diseases; and [.]

2. [Policies which address the] Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(b) The facility shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections for all personnel responsible for direct [patient] care.

(c) Sharp wastes.

1. Sharp wastes [including needles, scalpels, razors, or other sharp instruments used for patient care procedures] shall be segregated from other wastes and placed in puncture-resistant [puncture-resistant] containers immediately after use.

2. A needle or other contaminated sharp [Needles] shall not be recapped [by hand], purposely bent, [or] broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

3. A sharp waste container shall [The containers of sharp wastes shall either] be incinerated on or off-site [off-site], or be rendered nonhazardous [by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet].

4. Any non-disposable sharps be placed in a hard walled container for transport to a processing area for decontamination.

(d) Disposable waste.

1. All disposable waste shall be:

- a. Placed in a suitable bag [bags] or closed container [containers] so as to prevent leakage or spillage; [.] and [shall be]
- b. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The facility shall establish specific written policies regarding handling and disposal of all waste material [wastes].

[3.] [The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.]

[4.] [Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 C.F.R. 403 and 404 KAR 5:055, Section 9.]

(e) Infectious or communicable diseases. An individual [Patients] infected with one (1) of the following diseases shall not be admitted to the facility:

1. Anthrax; [.]
2. Campylobacteriosis; [.]
3. Cholera; [.]
4. Diphtheria; [.]
5. Hepatitis A; [.]
6. Measles; [.]
7. Pertussis; [.]
8. Plague; [.]
9. Poliomyelitis; [.]
10. Rabies (human); [.]
11. Rubella; [.]
12. Salmonellosis; [.]
13. Shigellosis; [.]
14. Typhoid fever; [.]
15. Yersiniosis; [.]
16. Brucellosis; [.]
17. Giardiasis; [.]
18. Leprosy; [.]
19. Psittacosis; [.]
20. Q fever; [.]
21. Tularemia; or [and]
22. Typhus.

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(f) A facility may admit a noninfectious ~~[(noninfectious)]~~ tuberculosis resident in accordance with 902 KAR 20:200, Section 4 or Section 8(5) ~~[patient under continuing medical supervision for his tuberculosis disease].~~

(g) A resident with symptoms or an abnormal chest x-ray consistent with tuberculosis shall be isolated and evaluated in accordance with 902 KAR 20:200, Section 6(4) ~~[Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet].~~

(3) Resident behavior and facility practices ~~[Use of control and discipline of residents].~~

(a) Each ~~[The]~~ facility shall develop and implement ~~[must have]~~ written policies and procedures for the management of conduct between staff and clients in accordance with 42 C.F.R. 483.450(a) ~~[control and discipline of residents that are available in each living unit and to parents and guardians].~~

(b) The facility shall:

1. Develop and implement written policies and procedures that govern the management of inappropriate resident behavior in accordance with 42 C.F.R. 483.450(b); and

2. ~~[4.] Not allow corporal punishment or seclusion of a resident[;]~~

~~[2.] [A resident to discipline another resident, unless it is done as part of an organized self-government program conducted in accordance with written policy; or]~~

~~[3.] [Seclusion of a resident].~~

(c) Chemical and physical restraints shall not be used, except as authorized by KRS 216.515(6).

(d) Restraints that require lock and key shall not be used.

(e) Emergency use of a restraint shall be applied only by appropriately trained personnel if:

1. A resident poses an imminent risk of harm to self or others;

and

2. The emergency restraint is the least restrictive intervention to achieve safely.

(f) A restraint shall not be used as:

1. Punishment;

2. Discipline;

3. Convenience for staff; or

4. Retaliation ~~[On orders of a physician, or in the case of an emergency until a physician is contacted, the facility may allow the use of physical restraint on a resident only if absolutely necessary to protect the resident from injuring himself or others but may not use physical restraint as punishment, for the convenience of the staff, or as a substitute for activities or treatment].~~

(d) ~~[The facility must have a written policy that specifies how and when physical restraint may be used, the staff members who must authorize its use, and the method for monitoring and controlling its use].~~

(g) ~~[(e)]~~ An order for physical restraint shall: ~~[may]~~

1. Be by a physician or other licensed health care practitioner who is acting within the scope of practice and trained in the use of emergency safety interventions;

2. Be carried out by trained staff;

3. Be the least restrictive safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with staff; and

4. Not be in effect longer than twelve (12) hours.

(h) Appropriately trained staff shall ~~[must]~~ check a resident placed in a physical restraint at least every thirty (30) minutes and document each check ~~[keep a record of these checks].~~

(i) A resident who is in a physical restraint shall ~~[must]~~ be given an opportunity for motion and exercise for a period of not less than ten (10) minutes during each two (2) hours of restraint.

(j) A mechanical device ~~[devices]~~ used for physical restraint shall ~~[must]~~ be designed and used in a way that:

1. Avoids ~~[causes the resident no]~~ physical injury; and

2. Results in the least possible physical discomfort ~~[. Restraints that require lock and key shall not be used].~~

(k) ~~[(f)]~~ A mechanical support ~~[supports]~~ used as a protective device shall ~~[devices must]~~ be designed and applied;

1. Under the supervision of a qualified professional trained in the use of emergency safety interventions; ~~[.]~~ and

2. In accordance with principles of good body alignment,

concern for circulation, and allowance for change of position.

~~[(l)]~~ ~~[(g)]~~ ~~[The facility may not use chemical restraint excessively, as punishment, for the convenience of the staff, as a substitute for activities or treatment, or in quantities that interfere with a resident's habilitation program.]~~

~~[(h)]~~ Behavior modification programs involving the use of aversive stimuli or time-out devices shall be:

1. Reviewed and approved by the facility's human rights committee or a QIPD ~~[qualified mental retardation professional];~~

2. Conducted only with the consent of the affected resident's parents, responsible family member, or ~~[legal-]guardian;~~ and

3. Described in written plans that are kept on file in the facility ~~[ICF/MR].~~

~~[(m)]~~ ~~[(f)]~~ A physical restraint used as a time-out device may be applied only:

1. During a behavior modification exercise ~~[exercises]~~ and ~~[only]~~

2. In the presence of the trainer.

~~[(n)]~~ ~~[(g)]~~ A time-out device ~~or [devices and]~~ aversive stimuli shall:

1. ~~[may-]Not be used for longer than one (1) hour;~~ ~~[.]~~ and

2. Used ~~[then]~~ only during a the behavior modification program ~~[and only-]under the supervision of the trainer.~~

(4) Medical supervision of residents.

(a) Each ~~[The]~~ facility shall maintain policies and procedures to ensure ~~[assure]~~ that each resident is ~~[shall be]~~ under the medical supervision of a physician.

(b) ~~[(a)]~~ The facility shall permit the resident, resident's responsible family member, or guardian to have a ~~[or his guardian] shall be permitted his] choice of physicians~~ ~~[physician].~~

(c) ~~[(b)]~~ The physician shall visit each resident at least every sixty (60) days or ~~[the residents] as often as necessary [and in no case less often than every sixty (60) days], unless justified and documented by the attending physician.~~

(d) ~~[(e)]~~ No less than ninety (90) days prior to the date of admission, each resident shall have a complete medical evaluation to assess the resident's ~~[include-]social, physical, emotional, and cognitive status~~ ~~[factors shall be made of the person desiring or requiring institutionalization prior to, but not to exceed three (3) months before admission].~~

(e) ~~[(d)]~~ After admission, each resident shall have a medical evaluation ~~[reevaluation]~~ at least annually ~~[shall be made by the resident's physician, a physician provided by a community service, or a registered visiting nurse, according to the resources for the community and the apparent needs of the resident receiving intermediate care].~~

(f) ~~[(e)]~~ The facility shall have formal arrangements to ensure that a physician or health care practitioner acting within the scope practice is available to provide necessary medical care in case of ~~[shall be made to provide for] medical emergency~~ ~~[emergencies on a twenty-four (24) hour, seven (7) days a week basis. This shall be the responsibility of the facility providing care].~~

(5) Health services.

(a) Health services shall include: ~~[.]~~

~~[(a)]~~ the establishment of a nursing care plan that:

1. Is ~~[as]~~ part of the total habilitation program for each resident; ~~[.]~~

2. [Each plan-]Shall be reviewed and modified as necessary, but no less than ~~[or at least] quarterly; and~~ ~~[.]~~

3. [Each plan-]Shall include goals ~~[.]~~ and nursing care needs; ~~[.]~~

(b) Nursing care shall help enable each resident ~~[to] achieve and maintain the highest degree of function, self-care, and independence, including~~ ~~[with those procedures requiring medical approval ordered by the attending physician. Nursing care shall include]:~~

1. Positioning and turning in which ~~[.]~~ nursing personnel shall encourage and assist residents in maintaining good body alignment while standing, sitting, or lying in bed to prevent decubiti; ~~[.]~~

2. Exercises in which ~~[.]~~ nursing personnel shall assist residents in maintaining maximum range of motion; ~~[.]~~

3. Bowel and bladder training in which ~~[.]~~ nursing personnel shall make every effort to train incontinent residents to gain bowel and bladder control; ~~[.]~~

4. Training in habits of personal hygiene, family life, and sex education that includes ~~[but is not limited to-]family planning and venereal disease counseling;~~ ~~[.]~~



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5. Ambulation ~~in which~~ nursing personnel shall assist and encourage residents with daily ambulation unless otherwise ordered by the physician; ~~and~~

6. Administration of medications and appropriate treatment.

~~(c)~~ A written monthly assessment of the resident's general condition with any changes in the resident's condition, actions, responses, attitudes, or appetite shall be recorded in the resident's record by licensed personnel.

(6) Pharmaceutical services.

(a) The facility shall provide pharmaceutical services, including appropriate methods and procedures that assure the accurate acquiring, receiving, for obtaining, dispensing, and administering of all drugs and biologicals to meet the needs of each resident, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacist.

(b) ~~If~~ The facility shall employ or obtain the services of ~~has a~~ pharmacy department, a licensed pharmacist who shall:

1. Provide consultation on all aspects of the provision of pharmacy services in the facility;

2. Establish a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation;

3. Determine that drug records are in order; and

4. Ensure that an account of all controlled drugs is maintained and reconciled ~~be employed to administer the pharmacy department~~.

(c) If the facility does not have a pharmacy department, it shall ensure that ~~have provision for promptly obtaining~~ prescribed drugs and biologicals may be obtained from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but maintains a supply of drugs, the consultant pharmacist shall:

1. Be responsible for the control of all bulk drugs;

2. Maintain records of the receipt and disposition of bulk drugs; and

3. Dispense drugs from the drug supply, properly label them, and make them available to appropriate licensed nursing personnel.

(e) A facility that stores and administers non-controlled substances in an emergency medication kit (EMK) shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

(f) A facility that stores and administers non-controlled substances from a long-term care facility drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(a). ~~An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.~~

~~(7)~~ Medication ~~Medication requirement and~~ services.

~~(a)~~ Medication administered to a resident ~~Conformance with physician's orders. All medications administered to residents~~ shall be ordered in writing by the prescribing:

1. Physician; or

2. Health care practitioner as authorized by the scope of practice.

(b) If an order is received by telephone, the order shall be:

1. Recorded in the resident's medical record; and

2. Signed by the physician or other health care practitioner as authorized under the practitioner's scope of practice within fourteen (14) days.

(c) If an order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician or prescribing practitioner that the medication will be stopped at a certain date unless the medication order is continued ~~Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders.~~

(d) A registered nurse or ~~The~~ pharmacist ~~or nurse~~ shall review the resident's medication profile at least monthly ~~on a regular basis~~.

~~(e) The prescribing physician or other prescribing practitioner shall review the resident's medication profile at least every two (2) months.~~

~~(f) The facility shall release medications to a resident who is discharged upon. The resident's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the resident's therapeutic regimen is not interrupted. Medications shall be released to residents on discharge or visits only after being labeled appropriately and on the written authorization of the physician or prescribing practitioner.~~

~~(8)~~ Administration of medications.

~~(a) A licensed health professional may:~~

1. Administer medications as authorized under the professional's scope of practice; or

2. Delegate medication administration tasks in accordance with paragraph (b) of this subsection.

(b) A facility may allow an unlicensed staff person to administer medication in accordance with KRS 194A.705(2)(c) and 201 KAR 20:700 as follows:

1. Medication administration is delegated to the unlicensed staff person by an available nurse;

2. If administration of oral or topical medication is delegated, the unlicensed staff person shall have a:

a. Certified medication aide (CMA) I credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN); or

b. Kentucky medication aide (KMA) credential from the Kentucky Community and Technical College System (KCTCS); and

3. If administration of a preloaded insulin injection is delegated, the unlicensed staff person shall have a CMA II credential from a training and skills competency evaluation program approved by KBN ~~All medications shall be administered by licensed nurses or personnel who have completed a state approved training program, from a state approved training provider.~~

(c) Each medication ~~dose~~ administered shall be recorded in the resident's medical record.

(d) An intramuscular injection ~~injections~~ shall be administered by a licensed nurse or ~~a~~ physician.

(e) If an intravenous injection ~~injections are~~ necessary, the injection ~~they~~ shall be administered by a licensed physician or ~~a~~ registered nurse.

~~(f)~~ The nursing station shall have readily available items necessary ~~required~~ for the proper administration of medication ~~readily available~~.

~~(g)~~ A medication that is ~~Medications~~ prescribed for one resident shall not be administered to any other resident.

~~(h)~~ A resident shall not be allowed to self-administer a medication ~~Self-administration of medications by residents shall not be permitted~~ except; ~~for drugs~~

1. On special order of the resident's physician or prescribing practitioner; or ~~and~~

2. In a pre-discharge program under the supervision of a licensed nurse as a part of the resident's treatment plan.

(i) The facility shall assure that a medication error or drug reaction is:

1. ~~d.~~ Medication errors and drug reactions shall be immediately reported to the resident's physician or practitioner; and

2. Documented ~~pharmacist and an entry thereof made~~ in the resident's medical record and in ~~as well as on~~ an incident report.

~~(j)~~ The facility shall provide up-to-date medication reference texts for use by the nursing staff (e.g., Physician's Desk Reference).

~~[4.]~~ Labeling and storing medications. All resident medications shall be plainly labeled with the:

1. Resident's name; ~~the~~

2. Name of the drug; ~~;~~

3. Strength; ~~;~~

4. Name of the pharmacy; ~~;~~

5. Prescription number; ~~;~~

6. Date; ~~;~~

7. Prescriber's ~~Physician~~ name; ~~;~~

8. Caution statements and directions for use, unless ~~a~~ ~~except where accepted~~ modified unit dose distribution system ~~is~~ ~~systems conforming to federal and state laws are~~ used.

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(k) All[The] medications [of each resident shall be] kept by the facility shall be:[and]

1. Stored in their original containers; and
2. [transferring between containers shall be prohibited. All medicines kept by the facility shall be] Kept in a locked place.

(l) The facility shall ensure that:

1. All[and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key.] medications requiring refrigeration are[shall be] kept in a separate locked box of adequate size in the refrigerator in the medication area.[-]

2. Drugs for external use are[shall be] stored separately from those administered by mouth injection; and

3. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels are returned to the issuing pharmacist or pharmacy for relabeling or disposal.[- Provisions shall also be made for the locked separate storage of medications of deceased and discharge resident until such medication is surrendered or destroyed in accordance with federal and state laws and regulations].

(9)[5.-] Controlled substances.

(a) Controlled substances shall be kept under double lock, for example[(-e.-)] in a locked box in a locked cabinet, and keys or access to the locked box and locked cabinet shall be accessible to designated staff only[)].

(b) A nurse may delegate administration of a regularly scheduled controlled substance to a CMA if the medication has been prescribed and labeled in a container for a specific resident.

(c) For a controlled substance ordered on a PRN basis, a nurse may delegate administration to a CMA if:

1. The medication has been prescribed and labeled in a container for a specific resident;

2. The nurse assesses the resident, in person or virtually, prior to administration of the PRN controlled substance;

3. The nurse assesses the resident, in person or virtually, following the administration of the PRN controlled substance; and

4. The nurse documents administration of the PRN controlled substance by a CMA in the resident's record.

(d) There shall be a controlled substances bound record book with numbered pages that includes:[-in which is recorded]

1. The name of the resident;[-the]

2. Date, time, kind, dosage, [balance remaining] and method of administration of each[all] controlled substance[substances];[-the]

3. Name of the physician or practitioner who prescribed the medications; and

4. Name of the:

a. Nurse or CMA who administered the controlled substance;[-it,

for

b. Staff member who supervised the self-administration.

(e) A staff member with access to controlled substances[In addition, there] shall be responsible for maintaining a recorded and signed:

1. Schedule II controlled substances count daily;[-] and

2. Schedule III, IV, and V controlled substances count at least one (1) time[once] per week[- by those persons who have access to controlled substances].

(f) All expired or unused controlled substances shall be disposed of, or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:

1. After expiration of the medication; or

2. From the date the medication was discontinued.

(g) If controlled substances are destroyed on-site:

1. The method of destruction shall render the drug unavailable and unusable;

2. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and

3. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the:

a. Date of destruction;

b. Resident name;

c. Drug name;

d. Drug strength;

e. Quantity;

f. Method of destruction;

g. Name of the person responsible for the destruction; and

h. Name of the witness[All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 C.F.R. 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources].

(h) A facility that stores and administers controlled substances in an EMK shall comply with the:

1. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), and (7) through (9); and

2. Limitation on the number and quantity of medications established by 902 KAR 55:070, Section 2(6).

(10)[(7)] Personal care services.

(a) Each resident shall receive training in personal skills essential for privacy and independence.[be trained to be as independent as possible to achieve and maintain good personal hygiene] including:

1. Bathing in which the facility shall:

a. [of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the facility shall] Provide soap, clean towels, and wash cloths for each resident; and[-]

b. Ensure that toilet articles such as brushes and combs shall not be used in common;[-]

2. Personal hygiene.[Shaving.]

3. Dental hygiene.[Cleaning and trimming of fingernails and toenails.]

4. Dressing;

5. Grooming;

6. Self-feeding; and

7. Communication of basic needs[Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable].

[5.] [Washing, grooming, and cutting of hair].

(b) If a[Each] resident [who] does not eliminate appropriately and independently, the facility shall:

1. Provide a[must be in a regular, systematic] toilet training program; and

2. Document the resident's[a record must be kept of his] progress[- in the program].

(c) A resident who is incontinent shall[must] be bathed or cleaned immediately upon voiding or soiling,[- unless specifically contraindicated by the training program,] and all soiled items shall[must] be changed.

(d) The staff shall train and if[when] necessary, assist a resident with dressing[the residents to dress in their own street clothing (unless otherwise indicated by the physician)].

(11)[(8)] Dental services.

(a) The facility shall provide or make arrangements for dental services, comprehensive dental diagnostic services, and comprehensive dental treatment in accordance with 42 C.F.R. 483.460(e) through (g).

(b) The facility shall maintain documentation of dental services in accordance with 42 C.F.R. 483.460(h)[shall be provided and if not available within the facility, arrangements with specialists in the dental field will be made for such service.]

[4.] [Appropriate dental services shall be provided through personal contact with all residents by dentists, dental hygienists, and dental assistants under the supervision of the dentists, health educators, and oral hygiene aids].

[c][2.] A dental professional shall participate, as appropriate, in the facility's interdisciplinary team[- serving the facility].

[3.] [There shall be sufficient supporting personnel, equipment, and facilities available to the dental professional if dental services are delivered within the facility.]

[(b)] [Dental records shall be part of each resident's record.]

[d][e)] A dentist shall be responsible for ensuring[insuring] that direct care staff are instructed in the proper use of oral hygiene methods for residents.

~~(12)~~~~(9)~~ Social services.

(a) ~~The facility shall provide social services directly or by contract to~~ shall be available either on staff or by formal arrangement with community resources for all residents and their families, including:

1. Evaluation and counseling with referral to, and use of, other planning for community placement; ~~and~~[-]
2. Discharge and follow up services rendered by or under the supervision of a qualified social worker.

(b) ~~A facility's~~~~The~~ social worker ~~of the intermediate care facility, providing services for the mentally retarded and developmentally disabled~~ shall be under the supervision of a:

1. Qualified social worker; ~~or~~
2. QIDP~~who is a qualified mental retardation professional~~.

(c) Social services shall be integrated with other elements of the individual program plan~~of care~~.

(d) A plan for social services~~such care~~ shall be recorded in the resident's record and ~~periodically~~ evaluated in conjunction with resident's individual program plan~~total plan of care~~.

~~[(e)]~~ ~~[Social services records shall be maintained as an integral part of case record maintained on each resident.]~~

~~(13)~~~~(10)~~ Recreation services. The facility shall:

(a) Coordinate recreational services with other services and programs that are provided to each resident; ~~and shall:~~

(b)~~(a)~~ Provide recreation equipment and supplies in a quantity and variety that is sufficient to carry out the stated objectives of the activities programs;

(c) Maintain in the resident's record a review conducted at least annually of each resident's recreational[-]

~~[(b)]~~ ~~[Keep resident records that include periodic surveys of the residents' recreation] interests, including a determination of~~~~[and] the extent and level of the resident's~~~~[residents']~~ participation in the recreation program; ~~and~~[-]

~~(d)~~~~(e)~~ Have enough qualified staff who meet the requirements of 42 C.F.R. 483.430(b)(5)(viii) and support personnel available to carry out the various recreation services~~with the qualifications as defined in the definitions~~.

~~(14)~~~~(11)~~ Speech-language~~Speech~~ pathology and audiology services. The facility shall provide speech-language~~speech~~ pathology and audiology services:

(a) By an individual who meets the requirements of 42 C.F.R. 483.430(b)(5)(vii); and

(b) As needed to maximize the communication skills of each resident in need of services~~residents needing such services. These services shall be provided by, or under the supervision of, a certified speech pathologist or audiologist who is a member of the interdisciplinary team~~.

~~(15)~~~~(12)~~ Occupational therapy.

(a) ~~The facility shall provide occupational therapy~~ shall be provided by or under the supervision of an~~a qualified~~ occupational therapist who meets the requirements of 42 C.F.R. 483.430(b)(5)(i) to meet a resident's need for services~~to residents as required by the resident's needs~~.

(b) The occupational therapist or occupational therapy assistant shall provide services in accordance with~~act upon~~ the individual program plan designed by the ~~[professional]~~interdisciplinary team~~of which the therapist is a member~~.

~~(16)~~~~(13)~~ Physical therapy.

(a) ~~The facility shall provide physical therapy~~ shall be provided by or under the supervision of a licensed physical therapist who meets the requirements of 42 C.F.R. 483.430(b)(5)(iii) to meet a resident's need for services~~to residents as required by the resident's needs~~.

(b) The physical therapist or physical therapy assistant shall provide services in accordance with~~act upon~~ the individual program plan designed by the ~~[professional]~~interdisciplinary team~~of which the therapist is a member~~.

~~(17)~~~~(14)~~ Psychological services.

(a) ~~The facility shall provide psychological services as needed by~~ shall be provided by a licensed or certified psychologist who meets the requirements of 42 C.F.R. 483.430(b)(5)(v).

(b) ~~The psychologist~~~~[pursuant to KRS Chapter 319 who] shall participate in~~ ~~[the] evaluation of each resident~~~~[and periodic review]~~,

individual treatment, and consultation and training of direct care~~program] staff as a member of the interdisciplinary team~~.

~~(18)~~~~(15)~~ Transportation.

(a) If transportation of residents is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for each resident~~[residents] who uses a wheelchair~~~~[use wheelchairs]~~.

2. An escort or assistant to the driver shall accompany a resident or residents~~[be provided in transporting residents to and from the facility] if necessary, to help ensure~~~~[for the resident's] safety during transport~~.

(b) The facility shall arrange for appropriate transportation in case of a medical emergency~~[emergencies]~~.

~~(19)~~~~(16)~~ Residential care services.

(a) All facilities shall provide residential care services to all residents including:

1. Room accommodations;
2. [-] Housekeeping and maintenances services;[-] and
3. Dietary services.

(b) ~~[All facilities shall meet the following requirements relating to the provision of residential care services:]~~

~~[(a)]~~ Room accommodations.

1. The facility shall provide each resident with:  
a. A~~[shall be provided a standard size] bed that is at least thirty-six (36) inches wide;~~

b. [-] equipped with substantial spring, -]A clean, comfortable mattress with a support mechanism;[-]

c. A mattress cover;[-]

d. Two (2) sheets and a pillow; and[-]

e. [an such -]Bed covering [as is required -]to keep the resident comfortable.

2. Each bed~~[Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by residents] shall be placed so that a~~~~[no] resident does not~~~~[may] experience discomfort because of proximity to a radiator, heat outlet, or~~~~[radiators, heat outlets, or by] exposure to drafts.~~

3.~~[2.]~~ The facility shall provide:

a. Window coverings;[-]

b. Bedside tables with reading lamps, [-]if appropriate;[-]

c. Comfortable chairs;

d. A chest or dresser with a mirror for each resident;

e. [-] chests or dressers with mirrors, -]A night light;[-] and

f. Storage space for clothing and other possessions.

4.~~[3.]~~ A resident~~[Residents] shall not be housed in a room, detached building, or other enclosure that has not been previously inspected and approved for residential use by the Office of Inspector General and the Department for Housing, Building, and Construction~~[unapproved rooms or unapproved detached buildings]~~.~~

5.~~[4.]~~ Basement rooms shall not be used for sleeping rooms for residents.

6.~~[5.]~~ Residents may have personal items and furniture, if~~[when it is physically] feasible~~.

7.~~[6.]~~ Each living room or lounge area shall have an adequate number of:

a. Reading lamps;[-] and

b. Tables and chairs or settees of sound construction and satisfactory design.

8.~~[7.]~~ Dining room furnishings shall be adequate in number, well-constructed~~[well constructed]~~, and of satisfactory design for the residents.

~~[c)]~~~~[8.]~~ ~~[Each resident shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other residents.]~~

~~[(b)]~~ Housekeeping and maintenance services.

1. The facility shall:

a. Maintain a clean and safe facility free of unpleasant odors; and

b. Ensure that[-] odors are~~[shall be] eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.~~

2. The facility shall:

a. Have available at all times an adequate supply of clean linen essential to the proper care and comfort of residents;

b. ~~Ensure that~~[shall be on hand at all times.] soiled clothing and linens ~~shall~~ receive immediate attention and ~~shall~~ not be allowed to accumulate.;

c. ~~Ensure that~~ clothing and linens~~or bedding~~ used by one resident shall not be used by another ~~unless~~[until] it has been laundered or dry cleaned; ~~and~~;

d. ~~3.~~ Ensure that soiled clothing and linens~~linen~~ shall be:

(i) Placed in washable or disposable containers;;

(ii) Transported in a sanitary manner; and

(iii) Stored in separate, well-ventilated areas in a manner to prevent contamination and odors.

3. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area.

5. Handwashing facilities with hot and cold water, soap dispenser, and paper towels shall be provided in the laundry area.

6. ~~5.~~ Clean linen shall be sorted, dried, ironed, folded, transported, stored, and distributed in a sanitary manner.

7. ~~6.~~ Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

8. ~~7.~~ Personal laundry ~~of residents or staff~~ shall be:

a. Collected, transported, sorted, washed, and dried in a sanitary manner; separate from bed linens;;

b. ~~8.~~ Resident's personal clothing shall be Laundered ~~by the facility~~ as often as necessary;

c. ~~Resident's personal clothing shall be~~ Laundered by the facility unless the resident or the resident's family accepts this responsibility; ~~and~~

d. ~~Residents capable of laundering their own personal clothing may be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be~~ Marked or labeled to identify the resident so that it may be ~~owner and~~ returned to the correct resident.

~~20~~~~9.~~ Maintenance. The premises shall be well kept and in good repair as established in paragraphs (a) through (d) of this subsection.

~~a.~~ Requirements shall include:

~~a.~~ The facility shall ~~ensure~~[insure] that the grounds are well kept and the exterior of the building, including the sidewalks, wide walks, steps, porches, ramps, and fences are in good repair.

~~b.~~ The interior of the building, including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors shall be screened.

~~c.~~ Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

~~d.~~ A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

~~21~~~~e.~~ Dietary services.

~~a.~~ The facility shall provide or contract for food services~~service~~ to meet the dietary needs of the residents, including:

1. Modified diets; or

2. Dietary restrictions as prescribed by the attending physician.

~~b.~~

1. ~~If~~[When] a facility contracts for food services~~service~~ with an outside food management company, the company shall provide a licensed dietitian~~qualified~~ ~~dietician or certified nutritionist~~ on a full-time, part-time, ~~full time, part time~~ or consultant basis to the facility.

2. The licensed dietitian~~qualified~~ ~~dietician or certified nutritionist~~ shall make recommendations to ~~have continuing liaison with~~ the medical and nursing staff ~~of the facility for recommendations~~ on dietetic policies affecting resident care.

3. The food management company shall comply with the ~~all of the appropriate requirements for~~ dietary services requirements of this subsection ~~in this administrative regulation~~.

~~c.~~~~4.~~ Therapeutic diets. If the facility provides therapeutic diets and the staff member responsible for the food services is not a

licensed dietitian~~dietician or certified nutritionist~~, the responsible staff person shall consult with a licensed dietitian~~designated person responsible for food service is not a qualified~~ ~~dietician or certified nutritionist~~ consultation by a qualified dietician or qualified nutritionist shall be provided.

~~d.~~ The facility shall:

1. ~~2.~~ Have a ~~Dietary staffing. There shall be~~ sufficient number of food service personnel;

2. Ensure that the food service staff schedules are ~~employed and their working hours, schedules of hours on duty, and days off shall be~~ posted; ~~and~~;

3. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety, or time required from regular dietary assignments.

~~e.~~~~3.~~ Menu planning.

1. ~~a.~~ Menus shall be planned, written, and rotated to avoid repetition.

2. The facility shall meet the nutrition needs of residents in accordance with ~~a~~ shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

3. ~~b.~~ Except as established in subparagraph 5. of this paragraph, meals shall correspond with the posted menu.

4. Menus shall ~~must~~ be planned and posted one (1) week in advance.

5. ~~If~~[When] changes in the menu are necessary;;

a. Substitutions shall provide equal nutritive value;

b. The changes shall be recorded on the menu; ~~and~~

c. Menus shall be kept on file for at least thirty (30) days.

~~f.~~~~c.~~ The daily menu shall include regular and all modified diets served within the facility based on a currently approved diet manual. The manual shall be available in the dietary department. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the resident's care with the resident and resident's chart through such methods as resident instruction, recording diet histories and through participation in rounds and conferences.;

~~4.~~ Food preparation and storage.

1. ~~a.~~ There shall be at least a three (3) day supply of food to prepare well balanced, palatable meals.

2. ~~b.~~ Food shall be prepared with consideration for any individual dietary requirement.

3. Modified diets, nutrient concentrates, and supplements shall be given only on the written orders of a:

a. Physician;

b. Advanced practice registered nurse; or

c. Physical assistant.

4. ~~c.~~ At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the ~~substantial~~ evening meal and breakfast.

5. Between-meal snacks and beverages, including ~~to include~~ an evening snack before bedtime, shall be available at all times for each resident, unless ~~offered to all residents. Adjustments shall be made when~~ medically contraindicated as documented by a physician in the resident's record.

~~6.~~~~d.~~ Foods shall be:

a. Prepared by methods that conserve nutritive value, flavor, and appearance; and

b. ~~shall be attractively~~ Served at the proper temperature~~temperatures~~, and in a form to meet individual needs.

7. ~~A~~ file of tested recipes, adjusted to appropriate yield shall be maintained.;

8. Food shall be cut, chopped, or ground to meet individual needs.

9. If a resident refuses the food served, nutritious substitutions shall be offered.

10. ~~e.~~ All opened containers or leftover food items shall be covered and dated when refrigerated.

~~g.~~~~5.~~ Serving of food.

1. ~~If~~[When] a resident cannot be served in the dining room, trays shall:

a. Be provided; ~~and~~ shall

b. Rest on firm supports.

2. Sturdy tray stands of proper height shall be provided for residents able to be out of bed.

3.[a.] ~~Direct care staff shall be responsible for correctly positioning a resident to eat meals served on a tray[Correct positioning of the resident to receive his tray shall be the responsibility of the direct-care staff].~~

4. ~~A resident in need of [Residents requiring] help [in] eating shall be assisted promptly upon receipt of meals[according to their training plan].~~

5.[b.] ~~The facility shall provide adaptive feeding equipment if needed by a resident[self-help devices shall be provided to contribute to the resident's independence in eating, if assessments deem necessary].~~

6. ~~Food services shall be provided in accordance with[Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and] 902 KAR 45:005 [Kentucky's Food Service Establishment Act and Food Service Code].~~

DAVID T. LOVELY, Acting Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 13, 2024

FILED WITH LRC: March 14, 2024

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Valerie Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum licensure requirements for the operation of and services provided by intermediate care facilities for individuals with intellectual disabilities (ICF/IID).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042, which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing standards for licensed ICF/IID providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for licensed ICF/IID providers.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires unlicensed staff who administer medications to ICF/IID residents under the delegation of a nurse to be a certified medication aide (CMA) I or Kentucky medication aide, or be a CMA II. This amendment also makes technical changes to comply with the drafting requirements of KRS Chapter 13A to help improve clarity and flow. Other needed updates include the addition of: 1. A cross-reference to KRS 216.532 to ensure compliance with the requirement nurse aide and home health aide abuse registry checks; 2. A cross-reference to KRS 209.030 to ensure compliance with the requirement for caregiver misconduct registry checks; 3. A cross-reference to KRS 216.789 and 216.793 to ensure compliance with the requirement for criminal background checks; 4. New language related to the confidentiality and security of resident records to ensure compliance with the Health Insurance Portability and Accountability Act of 1996. 5. New language that aligns with the requirements of 201 KAR 2:370 regarding the storage and administration of medications from emergency medication kits; and 6. New language to allow a CMA to administer controlled substances under the delegation of a nurse,

including a controlled substance ordered on a PRN basis under certain conditions. The Amended After Comments version deletes "certified nutritionist" and all references throughout the regulation. The amendment corrects spelling from "dietician" to industry standard "dietitian". Additionally, the Amended After Comments version makes changes to Section 3(8)(a) concerning discharge planning, which intends to comply with a settlement the commonwealth entered into with the Department of Justice in the mid-2000s. This amendment further clarifies the discharge planning process to preserve the principle that in Kentucky the transition process at ICF/IIDs begins at admission.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align with the 2023 passage of SB 110, which amended KRS 194A.705(2)(c) to require all long-term care facilities that provide basic health and health-related services to ensure that unlicensed staff who administer oral or topical medications, or preloaded injectable insulin to residents under the delegation of a nurse to have successfully completed a medication aide training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 194A.705(2)(c) because the statute applies to all long-term care facilities, including ICF/IID providers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing standards that align with the statutory requirements for licensed ICF/IID providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed ICF/IID providers. Kentucky's licensed ICFs/IID are as follows: Bingham Gardens, Cedar Lake Lodge, Cedar Lake Lodge – Park Place I, Cedar Lake Lodge – Park Place II, Cedar Lake Lodge – Sycamore Run I, Cedar Lake Lodge – Sycamore Run II, Del Maria ICF/IID, Hazelwood Center, Meadows ICF/IID, Oakwood – Unit 1, Oakwood – Unit 2, Oakwood – Unit 3, Oakwood – Unit 4, Outwood ICF/IID, Wendell Foster, and Windsong ICF/IID.

(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: ICF/IID providers must ensure that unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a CMA I or Kentucky medication aide, or be a CMA II to administer preloaded injectable insulin to residents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this amendment because ICF/IID providers already use certified medication aides.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The use of properly trained and competent certified medication aides leads to fewer errors with drug use and medication administration, thereby helping ensure fewer negative outcomes for residents. This amendment expands the scope of certified medication aides in accordance with the 2023 passage of SB 110 by allowing them to administer preloaded injectable insulin if they have a CMA II credential. CMAs are currently restricted to administering oral and topical medications.

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

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal funds and state matching funds of general and agency appropriations.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all PCHs and SPCHs regulated by it.

FISCAL NOTE

(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 Cabinet for Health and Family Services, Office of Inspector General, and licensed ICF/IID providers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

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

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during subsequent years.

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

- Revenues (+/-):
Expenditures (+/-):
Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation imposes no additional costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation imposes no additional costs on regulated entities.

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

- Cost Savings (+/-):
Expenditures (+/-):
Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000)

or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]: This amendment is not expected to have a major economic impact on the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 21 C.F.R. Part 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 34 C.F.R. 300.8(c)(6), 42 C.F.R. 483.400 – 483.480, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8

(2) State compliance standards. KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate. 21 C.F.R. Part 1317 sets forth the Drug Enforcement Administration's rules for the safe disposal and destruction of damaged, expired, returned, recalled, unused, or otherwise unwanted controlled substances. 29 C.F.R. 1910.1030(d)(2)(vii) establishes universal precautions for preventing contact with blood or other potentially infectious materials. 34 C.F.R. 300.8(c)(6) establishes the federal definition of "intellectual disability" under the Individuals with Disabilities Education Act. 42 C.F.R. 483.400 – 483.480 establish health and safety requirements that ICF/IID providers must meet in order to participate in the Medicare and Medicaid programs. 45 C.F.R. 1325.3 establishes definitions, including the federal definition of "developmental disabilities." 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information. In accordance with KRS 194A.705(2)(c) and 201 KAR 20:700, this amendment requires all long-term care facilities, including ICF/IID providers, to ensure that any unlicensed staff who administer oral or topical medications to residents under the delegation of a nurse be a certified medication aide I or Kentucky medication aide, or be a certified medication aide II to administer preloaded injectable insulin to residents.

(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 not more strict than the federal regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Substance Use Disorder
(Amended After Comments)

908 KAR 1:410. Recovery housing.

RELATES TO: 26 U.S.C. 501(c), 42 U.S.C. 3607, 12187
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 210.450, 222.211, 222.500-510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect the health of Kentucky citizens and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 222.504(3) allows for the promulgation of administrative regulations governing recovery housing certification. This administrative regulation establishes the standards and requirements for recovery housing certification.

Section 1. Definitions.

(1) "Applicant" means the owner, operator, or agency that submits an application for the certification of a recovery residence.

(2) "Cabinet" is defined by KRS 222.500(1).

(3) "Certified recovery residence" means a recovery residence that has met the required standards recognized and approved by the Cabinet for Health and Family Services.

(4) "Certifying organization" is defined by KRS 222.500(2).

(5) "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

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(6) "Kentucky Recovery Housing Network" means the organization recognized by the National Alliance for Recovery Residences (NARR) as the state affiliate.

(7) "Local government" is defined by KRS 222.500 (3).

(8) "National Alliance for Recovery Residence Standards" or "NARR standards" means a set of published national standards for all levels of recovery residences and is available on the NARR Web site at <https://narronline.org/affiliate-services/standards-and-certification-program/>.

(9) "Recovery residence" is defined by KRS 222.500(5).

(10) "Recovery support services" is defined by KRS 222.500(6).

Section 2. Application Process for Certification of Recovery Residences.

(1) Entities required by KRS 222.502 to obtain certification as a recovery residence shall submit:

(a) A "Recovery Housing Certification Application" that includes full, complete, and accurate information for each residence;

(b) A completed "Recovery Housing Assurances" for each residence;

(c) A signed "Recovery Housing Code of Ethics";

(d) A signed, notarized statement granting permission by the property owner of record, if other than the applicant, to operate a recovery residence on the owner's property;

(e) Proof of fire, liability, and hazard insurance coverage on the building in which the residence is located;

(f) ~~Proof of current inspections for:~~

~~1. Health and safety;~~

~~2. Building and occupancy;~~

~~3. Fire codes; and~~

~~4. Zoning requirements;~~

(g) Proof of current registration with the Kentucky Secretary of State;

~~(g)(h)~~ A copy of resident program policies that include:

1. Terms of occupancy, including policies related to a residents prescription and non-prescription medication usage and storage;

2. Financial obligations, including any fees, charges, or rents that may accrue to the resident and the process, time frame, and requirements for the collection of such obligations;

3. Financial deposits that may be collected, if any, and the time frame process, and requirements for the return of such deposits; and

4. Any circumstances under which the resident may be entitled to a refund of any amount for financial obligations collected by the recovery residence, if applicable;

~~(h)(i)~~ A copy of the emergency preparedness plan for the recovery house, that includes:

1. Emergency contact numbers;

2. An evacuation plan and map;

3. An emergency relocation plan that specifies where residents may live temporarily; and

4. A continuity of operations plan; and

~~(i)(j)~~ If applicable, any forms, documents, and guides used to mentor each resident or monitor each resident's participation in the development of the resident's recovery plan;

(2) If an application is incomplete or inaccurate, the certifying organization:

(a) Shall return the application within ten (10) business days to the applicant with written instructions regarding proper completion and resubmission of the application within a specified time frame; and

(b) May conduct~~, or delegate a designee to conduct,~~ a pre-inspection site visit.

(3) The cabinet ~~or,~~ certifying organization~~, or its designee~~ may conduct an inspection of the residence at any time without prior notice, including inspecting and copying financial and resident records.

(4) Required entities as established by KRS 222.502 shall submit a "Kentucky Recovery Housing Application" with the required supporting documentation identified in Section 2(1) to the Department for Behavioral Health, Developmental, and Intellectual Disabilities, attention: Kentucky Recovery Housing Certification Program via:

~~(a)~~ Electronic mail to [kyrecoveryhousing@ky.gov](mailto:kyrecoveryhousing@ky.gov); ~~or~~

~~(b)~~ Written mail to 275 E. Main Street, 4W, Frankfort, Kentucky, 40621.

Section 3. Approval or Denial of the Application for Recovery Residence Certification.

(1) The certifying organization shall conduct a site visit after the completed application and required documentation is received to determine if the application for certification for a recovery residence is:

(a) Approved;

(b) Provisionally approved; or

(c) Denied.

(2) The certifying organization shall grant approval for certification for a period of twelve (12) months if the applicant is in compliance with the "NARR standards"; or

(3) The certifying organization may grant provisional approval of the application for initial certification of a recovery residence in the following circumstances:

(a) The certifying organization has identified deficiencies with respect to specific NARR standards; and

(b) The identified deficiencies do not pose an imminent risk to the health, safety, or welfare of a resident; or

(4) The certifying organization shall deny the application for certification of a recovery residence in the following circumstances:

(a) The applicant is in noncompliance with the NARR standards;

(b) One or more deficiencies have been identified that pose an imminent risk to the health, safety, or welfare of the residents; or

(c) Information contained on the application reveals that there would be an unreasonable risk of harm to the residents if certification were granted; or

(5) The certifying organization may deny the application for certification of a recovery residence if the applicant has previously discontinued operations of a recovery residence without prior notification to staff, residents, and the certifying organization, and without implementation of a transition plan for residents to alternative living arrangements.

(6) If provisional approval is granted, it shall:

(a) Be for a period of six (6) months from the date of the issuance of the provisional approval;

(b) Require the entity to request the certifying organization to conduct a site visit for reconsideration of certification prior to the expiration of the provisional approval; and

(c) Require the entity to submit documentation that demonstrates that the identified deficiencies have been eliminated.

(7)

(a) Provisional approval may be granted two consecutive times, for a maximum of twelve (12) months, at the end of which[that] time the application for certification shall be denied;

~~(b) The entity shall have up to thirty (30) days to continue to operate and assist residents in securing alternative housing;~~

~~(c) The entity shall cease all operations by the thirty-first day after the date of notification of denial; and~~

~~(d) The entity shall submit a new application for certification as a recovery residence[and~~

~~(b) The entity shall wait twelve (12) months from the date of denial before a new application may be submitted].~~

(8) Certification, if granted, shall be valid for the residence and address for which the original certification is issued.

(9) Recovery residence certification is not transferable, if the sale or transfer of a recovery residence causes a change in at least twenty-five (25) percent of ownership, the new owner must apply for certification as established in Section 2 of this administrative regulation.

Section 4. Recertification.

(1) An entity that has been granted certification as a recovery residence, shall submit an application for recertification to the certifying organization at least sixty (60) days prior to the expiration date of the current certification.

(2) The certifying organization shall conduct a site visit as part of the recertification process.

(3)

(a) Recertification shall be granted **for a period of two (2) years** if the applicant is currently certified and is in compliance with the NARR standards; or

(b) Subsequent to the issuance of provisional recovery residence certification, the identified deficiencies on the basis of which the provisional certification was granted have been fully and satisfactorily remediated;

(4) Provisional approval shall be granted of the application for recertification of a recovery residence if:

(a) The certifying organization has identified deficiencies with respect to specific NARR standards; and

(b) The identified deficiencies do not pose an imminent risk to the health, safety, or welfare of a resident; or

(5) If provisional approval is granted during recertification, it shall be granted once and for a period not to exceed six (6) months.

**(6) If an applicant is granted provisional approval during the recertification process before being granted certification, then certification shall be for a period of one (1) year.**

**(7)** An application for recertification shall be denied in the following circumstances:

(a) The applicant is in noncompliance with the NARR standards;

(b) One or more deficiencies have been identified that pose an imminent risk to the health, safety, or welfare of the residents; or

(c) The application reveals that there would be an unreasonable risk of harm to the residents if certification were granted.

**(8)(7)** If the applicant has discontinued operations of a recovery residence without complying with the provisions of this administrative regulation an application for recertification may be denied.

**(9)(8)** If the certifying organization does not conduct a site visit before the expiration of certification, the certifying organization shall issue a written notification to the owner or operator of the recovery residence that extends certification **for a period of up to ninety (90) days or** until the certifying organization is able to conduct a site visit of the recovery residence.

**(10)(9)** The certifying organization shall notify the department of the organizations determination of an application for certification within ten (10) business days from the date of notification to the applicant.

#### Section 5. Department Responsibilities.

(1) The department shall:

(a) Require certified recovery residences to provide proof of certification at least annually;

(b) Require certified recovery residences to notify the department of any change in their certification status by a certifying organization;

(c) Require separate proof of certification for each recovery residence owned or operated by an individual or entity in the commonwealth;

(d) Post on its Web site the name, telephone number, and location by local jurisdiction of each certified recovery residence and shall update the list at least quarterly;

(e) Post on its Web site the name of each certifying organization approved by the cabinet; and

(f) Notify local governments with appropriate jurisdiction of receipt of proof of certification from a recovery residence within thirty (30) days of receipt of proof of certification.

(2) The department may seek legal action, up to and including cessation of operations and monetary penalties, against a recovery residence that fails to meet the requirements of this administrative regulation.

(3) The department, **or certifying organization,** shall not disclose the address of a recovery residence except to local governments, local law enforcement, and emergency personnel.

Section 6. Recovery Residence Owner or Operator Responsibilities. The owner or operator of a certified recovery residence shall ensure the following:

(1) The residence and its operations are in compliance with the NARR standards;

(2) The residence shall develop and adhere to a written policy

regarding the criminal history, including substantiated abuse or neglect of a child or vulnerable adult, of any staff member, employee, peer, or volunteer who serves in a staff capacity with the recovery residence and, in that capacity, has direct and regular interaction with residents;

(3) If the certified recovery residence plans to discontinue operations, the owner or operator shall submit, at least sixty (60) calendar days before the residence intends to cease operations, to the certifying organization, a written plan that includes the following information:

(a) Date operations will cease; and

(b) Notification to residents of the planned discontinuation of operations and of other certified recovery residences and housing options.

#### Section 7. **Background checks. (1) All staff of a recovery residence shall:**

**(a) Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police; and**

**(b) Not have a criminal conviction, or plea of guilty, to a:**

**1. Sex crime as specified in KRS 17.500;**

**2. Criminal offense against a minor as specified in KRS 17.500; or**

**3. Felony offense related to neglect, physical abuse, sexual abuse, or exploitation of a child or adult.**

**(2) A recovery residence that houses individuals under the age of eighteen (18) shall not employ anyone listed on the central registry established by 922 KAR 1:470.**

#### Section 8. Request for Reconsideration.

**(1) An applicant for certification dissatisfied by a decision of the cabinet, or certifying agency may submit a request for reconsideration by submitting, in writing, to the commissioner for the department, or designee, within ten (10) days following notice of the decision.**

**(2) The written request shall include:**

**(a) Application for certification that was denied; and**

**(b) Documentation that addresses the reasons an application for certification was denied.**

**(3) Upon receipt of a request for reconsideration, the commissioner or designee, shall:**

**(a) Review the request; and**

**(b) Render a written decision on the request for reconsideration within thirty (30) calendar days unless an extension is granted by the commissioner or designee:**

**1. Due to extenuating circumstances that prolong the review; and**

**2. With notice provided to the applicant for certification.**

#### Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Recovery Housing Assurances", 07/24;

(b) "Kentucky Recovery Housing Certification Application", 07/24;

(c) "Kentucky Recovery Housing Code of Ethics", 07/24; and

(d) "NARR Standard 3.0", 2018.

(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 departments Web site at <https://www.chfs.ky.gov/agencies/dbhdid/Pages/default.aspx>.

(3) This material is also available at <https://narronline.org/affiliate-services/standards-and-certification-program/>. 908 KAR 1:410

KATHERINE R. MARKS, Ph. D., Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY; March 13, 2024

FILED WITH LRC: March 14, 2024

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A,



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Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rachael Ratliff

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and standards for the administration of recovery housing certification.

(b) The necessity of this administrative regulation: This administrative regulation establishes the requirements and standards for the administration of recovery housing certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS 222.502 establishing the requirements and standards for the administration of recovery housing certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the authorizing statutes through fulfilling the requirements in KRS 222.502 by establishing the standards and requirements for the certification of recovery housing.

(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: As of February 5, 2024, there are currently 101 certified recovery residences with a total of 1,370 available beds for residents.

(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 regulated entities will be required to meet the criteria established in the statute and submit the required application and supporting documentation required to meet the standards established to be certified as a recovery residence.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with the application for certification.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will experience certification and an increased opportunity for funding for programming designed for individuals who experience substance use disorder and are in recovery.

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

(a) Initially: The Department for Behavioral Health, Developmental, and Intellectual Disabilities estimates it will cost approximately \$980,000 to implement the recovery house certification program in the first year.

(b) On a continuing basis: The Department for Behavioral Health, Developmental, and Intellectual Disabilities estimates it will cost approximately \$980,000 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: This administrative regulation will be funded through a combination of federal grant funds and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The new administrative regulation may result in an increased need for funding and or the establishment of fees dependent upon the request from the impacted

entities. The impact is unknown at this time and is being implemented at no cost to the applicants.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

FISCAL NOTE

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 222.502

(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 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 any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The Department for Behavioral Health, Developmental, and Intellectual Disabilities estimates it will cost approximately \$980,000 to implement the recovery house certification program in the first year.

(d) How much will it cost to administer this program for subsequent years? The Department for Behavioral Health, Developmental, and Intellectual Disabilities estimates it will cost approximately \$980,000 annually, on a continuing basis.

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: To administer this regulation, funds are needed to support salaries of at least 8 full-time staff to implement the certification process, travel reimbursement to perform recovery residence site visits, training and technical assistance, community outreach and education. These costs also include the funds necessary to purchase, implement, and utilize a data management platform.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate cost savings for the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate cost saving for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation should not cost regulated entities in the first year for the provision of already established services.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation should not cost regulated entities in subsequent years for the provision of already established services.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]: This administrative regulation will have a major economic impact to the department without a budget allocation for the implementation of recovery housing certification. Implementation will require approximately 8 full time staff which will result in a financial expenditure of \$980,000 for salary, fringe, and operating costs annually.

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**BOARDS AND COMMISSIONS**  
**Board of Pharmacy**  
**(Amendment)**

**201 KAR 2:220. Collaborative care agreements.**

RELATES TO: KRS 315.010(5)(4), 315.121, 315.040(3)(4), 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations to regulate and control matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. This administrative regulation establishes minimum requirements for the development and maintenance of collaborative care agreements between pharmacist and practitioner.

Section 1. A collaborative care agreement shall:

- (1) Be in writing;
- (2) Be signed and dated by:
  - (a) Each practitioner; and
  - (b) Each pharmacist who is a party to the agreement;
- (3) Provide the method for referral of patients to be managed under the agreement; and
- (4) State the method for termination of the agreement.

Section 2. The following information relating to a patient managed under the collaborative care agreement shall be maintained by the pharmacist:

- (1) Name;
- (2) Address and phone number;
- (3) Emergency notification contact;
- (4) Date of birth, weight, height, and sex[gender];
- (5) Medical history, including:
  - (a) Known diseases;
  - (b) Known allergies;
  - (c) Reactions and conditions relating to:
    1. Prescription medications; and
    2. Nonprescription medications;
  - (d) Current prescription regimen; and
  - (e) Current nonprescription regimen;
- (6) Lab tests ordered, including results of lab tests;
- (7) Assessment of patient outcomes;
- (8) Notes relating to the care and course of therapy of the patient; and
- (9) Documentation of patient consent to receive care under the collaborative care agreement.

Section 3. Documentation relating to the care and course of therapy of the patient pursuant to the agreement shall be documented in the patient's record maintained by the pharmacist, provided to the collaborating practitioner, and be readily available to other healthcare professionals providing care to the patient.

Section 4. A collaborative care agreement shall comply with KRS 315.010(5)(4) and contain the following information:

- (1) Protocol, criteria, standing orders, or other method by which services are authorized;
- (2) The method established for the assessment of patient outcomes, if appropriate; and
- (3) Lab tests that may be ordered.

Section 5. A collaborative care agreement and information and records required by the provisions of this administrative regulation shall be maintained:

- (1) At the pharmacist's practice site; and
- (2) For at least five (5) years after the termination of the agreement.

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: February 19, 2024

FILED WITH LRC: February 20, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2024, at 10:00 a.m. Eastern Time at 125 Holmes Street, Frankfort, Kentucky 40601 and via teleconference. 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, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Christopher Harlow

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This regulation creates rules for pharmacists engaged in collaborative practice with a practitioner.
  - (b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations to regulate and control all matters set forth in KRS Chapter 315. KRS 315.010(5) defines collaborative care agreements.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes consistent with the requirements of KRS 315.191(1)(a) minimum requirements for those pharmacists utilizing collaborative care agreements.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation allows for clear rules for those utilizing a collaborative care agreement. Without this regulation, it would be unclear what information relating to a patient managed under a collaborative care agreement needed to be maintained by the pharmacist.
- (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 is only to make technical changes for language efficacy and to cite the correct sections of statutory law that had been modified since this regulation was originally promulgated in 1997 and last revised in 2015.
  - (b) The necessity of the amendment to this administrative regulation: To ensure that the correct statutory sections of law were cited.
  - (c) How the amendment conforms to the content of the authorizing statutes: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to

pharmacists and pharmacies. KRS 315.191(1)(a) directs the Board of Pharmacy to promulgate administrative regulations to regulate and control all matters set forth in KRS 315.

(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 by ensuring that the appropriate statutory citations are correct.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally by this regulation amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The ability to participate in collaborative practice with practitioners as already authorized under KRS 315.010(5).

(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 amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists that desire to utilize collaborative care agreements.

FISCAL NOTE

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: This regulation does not impact costs.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? Nothing.

(d) How much will it cost the regulated entities for subsequent years? Nothing.

Cost Savings (+/-): 0

Expenditures (+/-): 0

Other Explanation: There are no costs incorporated into this regulation or implied with compliance.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This regulation does not have major economic impact.

**BOARDS AND COMMISSIONS**

**Board of Nursing**

**(Amendment)**

**201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.**

RELATES TO: KRS 194A.540(11), 314.011(5), 314.021, 314.041(1)(a), 314.111(1), 314.131(1), (2), 620.020(8)

STATUTORY AUTHORITY: KRS 314.041(1)(a), 314.051(1)(a), 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) and 314.051(1)(a) require that an applicant for licensure as a registered or licensed practical nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing regardless of delivery models shall meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the board to promulgate administrative regulations necessary to approve programs of nursing. This administrative regulation establishes the curriculum requirements for prelicensure registered nurse and practical nursing programs.

Section 1. Definitions. (1) "Debriefing" means an activity that follows a simulation experience, is led by a nurse faculty as established in 201 KAR 20:310, Section 2, encourages participant's reflective thinking, and provides feedback regarding the participant's performance.

(2) "Distance learning" means didactic instruction offered by any means where the student and faculty are in separate physical locations.

(3) "External examination" means a standardized or norm-referenced examination that is designed to compare and rank test takers in relation to one another and is not produced by the program of nursing.

(4) "Practical nursing program" means a program of nursing organized and administered by a vocational, technical, or adult education system or an independent school at a postsecondary level that awards the graduate a diploma in practical nursing upon meeting requirements of the program.

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(5) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse.

(6) "Registered nursing program" means a program of nursing organized and administered by an institution of higher learning that awards a degree in nursing upon meeting requirements of the program.

(7) "Remediation" means the process by which a student improves or corrects a knowledge deficit through external examinations, other assignments, or activities.

(8) "Simulation" means an activity or a technique that replicates actual or potential situations in clinical practice that allows the participant to develop or enhance critical thinking.

Section 2. General. (1) An applicant for licensure shall complete a prelicensure program of nursing that meets the requirements of this administrative regulation.

(2) Length.

(a) A registered nursing program shall be a minimum of two (2) academic years, which may include prior articulated academic credits.

(b) A practical nursing program shall be a minimum of one (1) academic year.

(3) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(b) The program outcomes shall describe the expected competencies of the graduate.

(c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(4) Approval.

(a) A curriculum plan shall be approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall enable the student to develop the nursing knowledge, skills, and competencies for the expected entry level and scope of practice.

(c) Theory and clinical experiences shall provide the student with opportunities to acquire and demonstrate the knowledge, skills, and competencies necessary for safe practice.

(5) Curriculum plan.

(a) The development, implementation, evaluation, and revision of the curriculum shall be the responsibility of the nursing faculty including the program administrator with input from students.

(b) The curriculum of the program of nursing shall assure the development of evidence based practice for the level and scope of nursing practice. This shall include the skills to identify and apply best practices in nursing care by providing client-centered, culturally competent care and respecting client differences, values, preferences, and expressed needs.

(c) A registered nursing program may determine that a portion of the curriculum fulfills the scope of practice for licensed practical nursing and allow students to exit the program and be made eligible for the NCLEX-PN examination. The registered nursing program shall submit its plan to the board for approval.

(6) Organization of the curriculum.

(a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.

(b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program.

(c) There shall be a rationale for the amount of time or credits allocated to course and clinical practice experience.

(d) A course syllabus shall be developed for each nursing course to include outcomes, planned instruction, learning activities, and method of evaluation.

1. Each course shall be implemented in accordance with the established course syllabus.

2. A copy of each course syllabus shall be on file in the program of nursing office and shall be available to the board upon request.

(e) The curriculum plan shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(f) A course may be offered as a distance learning course. A distance learning course shall meet the same standards as established in 201 KAR 20:260 through [201 KAR]20:360 for any other course.

(7) Curriculum components.

(a) The curriculum of a registered nursing program or a practical nursing program shall prepare the graduate for licensure and full scope of practice as defined by current standards for nursing practice and expected competencies of graduates at the appropriate educational level.

(b) The curriculum shall include:

1. Theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life span; and

2. Information regarding Kentucky nursing laws, including scope of practice, licensure requirements, and the role of the board of nursing.

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program outcomes and enable the student to observe and practice safe nursing care of persons at each stage of the life span. Experiences shall include opportunities to learn and provide care to diverse ethnic and cultural populations.

(d) Clinical practice experience shall be supervised by board approved nursing faculty in accordance with 201 KAR 20:310.

(e) The curriculum shall have written measurable program outcomes that reflect the role of the graduate.

(f) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(8) Curriculum change.

(a) A program of nursing that is not accredited by a national nursing accrediting body shall submit a written plan for major curriculum revisions to the board a minimum of four (4) months prior to the planned implementation.

1. A request for curriculum revision shall include the present plan and the proposed change with rationale and expected outcomes.

2. The board shall be available to assist if curriculum revisions are being considered.

3. Major curriculum revisions shall include:

a. A change in the philosophy, mission, or outcomes that results in a reorganization or reconceptualization of the entire curriculum; or  
b. The addition of tracks or alternative programs of study that provide educational mobility.

(b) A program of nursing that implements a curriculum change shall provide an evaluation of the outcomes of those changes through the first graduating class following full implementation of the curriculum change. The program of nursing shall also submit the evaluation with its annual report.

(9) Integrated practicum.

(a) The curriculum shall include an integrated practicum. The integrated practicum shall consist of a minimum of 120 clock hours of concentrated clinical experience of direct patient care in a health care facility or health care organization.

(b) The integrated practicum shall be completed within a period not to exceed seven (7) consecutive weeks while the governing institution is in session and within seven (7) months of graduation.

Section 3. Simulation Standards. (1)(a) A program of nursing that uses simulation shall adhere to the standards set in this section.

(b) A program of nursing shall not use simulation for more than fifty (50) percent of its total clinical hours required for graduation.

(2)(a) The program of nursing shall provide resources sufficient to support the simulation activities, including training of the faculty, and programmatic outcomes.

(b) Simulation activities shall be managed by a nurse who is academically and experientially qualified in the use of simulation, both in its pedagogical and technical aspects. The managing nurse shall demonstrate his or her qualifications by:

1. Attendance at simulation conferences;

2. Completion of educational activities related to simulation; or

3. Holding a credential issued by the Society for Simulation in Healthcare or a simulation preparation program recognized by the International Nursing Association for Clinical Simulation.

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(c) The program of nursing shall have written rationale for the use and purpose of simulation within the curriculum.

(d) The program of nursing shall have an orientation plan for faculty concerning simulation.

(e) The program of nursing shall have a written procedure on the method of prebriefing and debriefing each simulated activity.

(3) The program of nursing shall have appropriate facilities for conducting simulation. This shall include educational and technological resources and equipment to meet the intended objectives of the simulation.

(4) Faculty, both didactic and clinical, that utilize simulation shall:

(a) Have training in the use of simulation; and

(b) Engage in on-going professional development in the use of simulation.

(5) The simulation activities shall be linked to the program of nursing's course objectives and the programmatic outcomes.

(6) Beginning July 1, 2019, a program of nursing shall submit evidence of compliance with these standards in the annual report required by 201 KAR 20:360, Section 3(1) of this administrative regulation.

### Section 4. Use of External Examinations.

(1) External examinations may be used to assist in the remediation of a student or as a part of the final course grade.[.]

(2) A program of nursing shall not use an external examination as the sole basis to determine a student's progression or graduation.

(3) A curriculum change that includes the implementation of an external examination shall include consideration of multiple evaluation criteria, and shall not be based solely on external examination test results.

(4) A program of nursing that utilizes external examinations as a component of student remediation shall ensure that completion of remediation occurs within the same semester or quarter.

(5) The academic progression policy of the program of nursing and course syllabi shall clearly outline the role of an external examination, including the frequency of and schedule for the testing, and the weight to be applied to results when calculating the final course grade. A course syllabus that references an external examination shall include information needed to calculate the impact of test results in any given external examination on the final course grade. If a course syllabus requires a specific average[~~test~~] score [on all exams]for examinations as a condition for passing the course, an external examination shall not be weighted more than the lowest weighted individual examination included within the course grade average[~~student results on external exams shall be excluded from that calculation~~].

(6) A program of nursing shall not require students who have completed all requirements for graduation to earn a specific score or benchmark on an external examination as a condition for graduation[ or for placing the student's name on the Certified List of Kentucky Program of Nursing Graduates pursuant to 201 KAR 20:070].

Section 5. (1) A program of nursing shall provide the students on-campus physical facilities pursuant to 201 KAR 20:350, Section 2, to practice clinical skills where the student may be observed in-person by a member of nurse faculty or a skills laboratory instructor, as defined in 201 KAR 20:310, Section 1.

(2) Prior to the evaluation of clinical skills, students shall be provided access to physical facilities on campus to practice clinical skills, where the student is observed in-person by a member of nurse faculty or skills laboratory instructor who may provide feedback.

(3) Students shall be evaluated in the clinical skills laboratory on the program's campus or in a clinical setting. The students' skills shall be evaluated by a member of nurse faculty or a skills laboratory instructor.

### ~~Section 6.~~[Section 5.] Curriculum Additions.

(1) Each program of nursing shall include information in its curriculum that meets the requirements of KRS 194A.540 related to domestic violence and elder abuse, neglect, and exploitation.

(2) Each program of nursing shall include information about[.]

~~[(a)] Pediatric abusive head trauma as it is defined in KRS 620.020(8);~~

~~(b) Suicide prevention and wellness topics listed in subsection (3) of this section by August 15, 2022; and~~

~~(c) Implicit bias topics listed in subsection (4) of this section by August 15, 2022].~~

(3) Each program of nursing shall include suicide[Suicide] prevention and wellness information[~~topics shall include:~~], including the following topics:

(a) Chronic toxic stress and secondary traumatic stress potentially increasing the incidence of suicide amongst nurses;

(b) A confidential and standardized pathway to care for nurses that addresses screening, assessing, safety planning, referrals, and follow-up for nurses at risk for suicide;

(c) Systems of care, evidence-informed approaches, and best practices to reduce suicide rates; and

(d) Ethical legal considerations of caring for patients and nurses who are suicidal.

~~[(4) Implicit bias topics shall include:~~

~~(a) The impact of historical racism and other forms of invidious discrimination on the provisions of healthcare;~~

~~(b) Methods of evaluation the presence and extent of implicit bias; and~~

~~(c) Measures that may be taken to reduce implicit bias.]~~

AUDRIA DENKER, President

APPROVED BY AGENCY: February 15, 2024

FILED WITH LRC: March 13, 2024 at 10:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2024 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2024, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, email Jeffrey.Prather@ky.gov or submit a comment at <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for curriculum in prelicensure programs of nursing education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing standards for curriculum in prelicensure programs of nursing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for curriculum in prelicensure programs of nursing education.

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

(a) How the amendment will change this existing administrative regulation: It clarifies that external examinations may be weighted no more than the lowest weighted individual examination included within the course grade average; requires on-campus physical facilities pursuant for students to practice clinical skills and be observed and provided feedback prior to testing; and it removes implicit bias as a

required curriculum subject for programs of prelicensure RN and LPN education.

(b) The necessity of the amendment to this administrative regulation: Programs of nursing and students have struggled with the use and interpretation of regulatory guidelines regarding the weight of external examinations. Moreover, the Board has concerns about the effectiveness of programs of nursing that do not provide for hands-on clinical training experience. The Board is removing implicit bias training due to concerns raised by licensees and the general assembly.

(c) How the amendment conforms to the content of the authorizing statutes: The clarification regarding external exams permits programs of nursing education to use external exams as a tool in nursing education, and more guidance to programs of nursing in their use of such examinations. The amendments conform to the authorizing statutes by expanding curriculum requirements to include subjects that are a needed component of nursing education.

(d) How the amendment will assist in the effective administration of the statutes: By setting curriculum standards for programs of prelicensure RN and LPN education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing, RN and LPN nursing students, approximately ninety-five (95).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have provided for facilities to allow students to have hands-on clinical experience.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for the removal of the implicit bias requirement or establishing a grade weight for external examinations, or clinical facilities. Programs of nursing are currently required to have adequate facilities under 201 KAR 20:350, Section 2, this amendment adds that students shall be provided access to the facilities for training and validation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Students will be better prepared for nursing practice through their participation in in-person clinical training and the use of external examinations.

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

(a) Initially: There are no additional costs.

(b) On a continuing basis: There are not additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, the changes apply to all equally.

#### FISCAL NOTE

(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? 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, 314.111(3), 194A.540, 620.020.

(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? 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact.

#### BOARDS AND COMMISSIONS Board of Nursing (Amendment)

**201 KAR 20:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs.**

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.111 requires nursing programs to be approved by the board. This administrative regulation establishes evaluative standards to assure that the programs of nursing provide the necessary instruction and services to prepare graduates for licensure eligibility as registered nurses or as practical nurses.

Section 1. Program of Nursing Accredited by a National Nursing Accrediting Body.

(1)(a)1. A prelicensure registered nursing or licensed practical nursing program that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall be deemed to be in compliance with the standards of 201 KAR 20:260 through [201-KAR-]20:360.

2. A national nursing accrediting body shall include:

a. The Accreditation Commission for Education in Nursing (ACEN);

b. The Commission for Nursing Education Accreditation (CNEA);

c. The Commission on Collegiate Nursing Education (CCNE); or

d. Any other national nursing accrediting body recognized by the

United States Department of Education.

3. The accredited program shall comply with Sections 3 through 10 of this administrative regulation.

(b) The board shall retain jurisdiction over accredited programs and may conduct site visits or other investigations into any allegation that may constitute a violation of 201 KAR 20:260 through [201-KAR]20:360. The board may also conduct site visits in accordance with Section 5 of this administrative regulation or when a national nursing accreditation board visits the program.

(2) A prelicensure program of nursing that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall submit all correspondence and reports to and from the accrediting body to the board within thirty (30) days of submission or receipt.

Section 2. Programs of Nursing Not Accredited by a National Nursing Accrediting Body.

(1) A program of nursing that is not accredited by a national nursing accrediting body on the effective date of this administrative regulation shall:

(a) Obtain candidacy status with a national nursing accrediting body within three (3) years; and

(b) Obtain full accreditation within four (4) years of the effective date of this administrative regulation.

(2) A program of nursing that is not accredited by a national nursing accrediting body on the effective date of this administrative regulation shall submit a copy of all correspondence and reports to and from the national nursing accrediting body within thirty (30) days of submission or receipt.

(3) A program of nursing that does not obtain or maintain accreditation from a national nursing accrediting body may have its approval withdrawn by the board pursuant to section 7 of this administrative regulation.

Section 3. Reports and Evaluation. (1) A program of nursing shall submit the Annual Report of the Program of Nursing to the board regarding its compliance with 201 KAR 20:260 through [201-KAR]20:360. It shall also submit the benchmarks set out in Section 5(2)(f) of this administrative regulation.

(2) To verify continued compliance with 201 KAR 20:260 through [201-KAR]20:360, the program of nursing shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other related documents as requested by the board.

(3) Pursuant to 201 KAR 20:260, Section 2(7)(a), the faculty shall engage in an evidence based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation report that is submitted to the board.

(4) Data collection for the evaluation report shall be on-going and shall reflect aggregate analysis and trending.

(5) The evaluation report shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program:

(a) Organization and administration of the program of nursing;

(b) Curriculum;

(c) Resources, facilities, and services;

(d) Teaching and learning methods including distance education;

(e) Faculty evaluation;

(f) Student achievement of program outcomes;

(g) Graduation rates;

(h) Licensure examination pass rates;

(i) Employment rates of graduates; and

(j) Clinical resources, including laboratory and simulation.

(6) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education program is substantially comparable to a campus based program.

(7) The evaluation report shall provide evidence that the outcomes of the evaluation process are used to improve the quality

and strength of the program.

Section 4. Benchmarks. The board shall utilize the following benchmarks to evaluate a program of nursing. Except for the pass rate, the benchmarks shall be calculated annually from July 1 to June 30. The board shall calculate the pass rate for a program of nursing on an annual basis from January 1 to December 31 for all first time takers of the NCLEX.

(1) The pass rate for first time takers of the NCLEX who tested within twelve (12) months of the program completion date as reported on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates incorporated by reference in 201 KAR 20:070;

(2) The faculty turnover rate. A faculty member whose employment ends on or before June 30 of any year shall be counted in that year's calculation;

(3) The program administrator turnover rate;

(4) The graduation rate;

(5) The faculty grievance rate; and

(6) The student grievance rate.

Section 5. Site Visits. (1) The board may conduct site visits at any time.

(2) The following situations may be cause for a site visit to determine if the standards of 201 KAR 20:260 through [201-KAR]20:360 are being met:

(a) Denial, withdrawal, or change of status by a national nursing accrediting agency;

(b) Providing false or misleading information to students or the public concerning the program;

(c) A written complaint received from faculty, students, or the general public relating to a violation of 201 KAR 20:260 through [201-KAR]20:360;

(d) A change in physical facilities;

(e) Information received by the board that may indicate a violation of 201 KAR 20:260 through [201-KAR]20:360;

(f) A change in any of the benchmarks listed in Section 4 of this administrative regulation as follows:

1. A pass rate as calculated by Section 4 of this administrative regulation that:

a. Is less than an average of eighty (80) percent for three (3) consecutive years; or

b. Varies above and below eighty (80) percent from year to year over the previous five (5) years;

2. A faculty turnover rate greater than thirty (30) percent for two (2) consecutive years;

3. A program administrator turnover rate of more than three (3) individuals in five (5) years;

4. A graduation rate of less than sixty (60) percent of the original admitted cohort of newly-enrolled students within the standard length of the program of nursing. The graduation rate shall be calculated by comparing the number of students who started in each graduating cohort within the reporting period to those who graduated on time from the cohort. The graduation rate calculation may exclude students who have left the program of nursing due to documented extenuating circumstances, such as hospitalization, long-term illness, family obligations, relocation, financial barriers, or decisions to change majors or transfer to another institution;

5. Twenty-five (25) percent or more of the total number of nursing faculty who file grievances or appeals that are substantiated; or

6. Substantiated student grievances and appeals of more than ten (10) percent of the student population enrolled in the nursing program each year; or

(g) Failure to submit reports as required by 201 KAR 20:260 through [201-KAR]20:360.

(3) A program of nursing that fails to meet one (1) or more benchmarks for a year shall submit a report that examines the factors that contributed to the failure to meet and shall provide a description of the corrective measures to be implemented.

(4)(a) The board shall annually compile information on how the programs of nursing met the benchmarks. This information shall be published on the board's Web site[at www.kbn.gov].



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(b) A program of nursing shall post a link to the information compiled pursuant to paragraph (a) of this subsection on the program of nursing's Web site. The link shall be easy to locate on the program's home page.

Section 6. Action Following Site Visit. (1)(a) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(b) The program administrator shall be available during the discussion of the report at the board committee to provide clarification.

(c) If the site visit results in a finding of non-compliance with 201 KAR 20:260 through [201-KAR]-20:360 by the program of nursing, a letter shall be sent to the program administrator regarding any requirements to be met.

(d) The board shall notify the program of nursing of the time frame within which it shall meet the requirements. The board shall verify that the requirements have been met.

(2)(a) If the program of nursing is unable to meet the requirements in the time set by the board, it may request additional time. The board, in its discretion, may grant or deny this request based on the rationale for the request.

(b) If the board denies the request for additional time, it shall begin the process established in Section 7 of this administrative regulation.

Section 7. Withdrawal of Approval. (1) If, in the opinion of the board, the standards established by 201 KAR 20:260 through [201-KAR]-20:360 are not being met, the board shall send notice to the program administrator of the affected program of nursing of its intent to withdraw approval. The notice shall be sent return receipt requested.

(2) When making this determination, the board shall consider the following factors:

(a) The number and severity of the deficiencies;

(b) The length of time in which the deficiencies have existed; and

(c) Any exigent circumstances.

(3) Within thirty (30) days of receipt of the notice, the program administrator of the affected program may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, program approval shall be withdrawn and the program shall be closed. A closed program shall comply with subsection (5) of this section.

(4)(a) If a program of nursing requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The hearing shall be held before a hearing officer or before the full board.

(5)(a) A program of nursing whose approval has been withdrawn by the board shall be removed from the official approved status listing upon the effective date of the decision. Students currently enrolled in the last semester or quarter of the program may complete the program. If the student graduates, he or she may apply for licensure and make take the licensure examination. Any other student shall not be allowed to apply for licensure or take the licensure examination, unless the student graduates from another approved program of nursing.

(b) The program of nursing that has been closed shall assist a currently enrolled student to transfer to an approved program of nursing.

Section 8. Voluntary Closure of a Program. (1) A governing institution seeking to close a program of nursing shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) A governing institution may choose one (1) of the following procedures for closing a program of nursing as established in paragraph (a) or (b) of this subsection.

(a) The governing institution shall continue the program of nursing until the last class enrolled has graduated.

1. The program shall continue to meet the standards until all students enrolled in nursing courses have graduated or transferred.

2. The official closing of the program shall be the date on the degree, certificate, or diploma of the last graduate.

3. The governing institution shall notify the board in writing of the official closing date.

(b) The governing institution shall close the program following the transfer of students to other approved programs.

1. The program shall continue to meet the standards until all students have transferred.

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the governing institution.

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records.

(a) The governing institution that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The governing institution that ceases to exist shall transfer the academic transcript of each student and graduate to a third party vendor approved by the Council for Postsecondary Education for safekeeping.

Section 9. Change in Ownership or Organization of the Governing Institution. (1) The governing institution shall notify the board in writing of any intent to transfer administrative authority or ownership. The new administrative authority or owner shall inform the board of its plans for immediate and future operation.

(2) The board shall conduct a site visit to ensure adherence by the program of nursing to 201 KAR 20:260 through [201-KAR]-20:360.

(3) Following this site visit, approval of the program of nursing shall continue under the new ownership or administrative authority if the approval standards continue to be met.

Section 10. Incorporation by Reference. (1) "Annual Report of the Program of Nursing", 3/2024[5/23], Kentucky Board of Nursing, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/General/Pages/Document-Library.aspx>. [<https://kbn.ky.gov/document-library/Pages/default.aspx>.]

AUDRIA DENKER, President

APPROVED BY AGENCY: February 15, 2024

FILED WITH LRC: March 13, 2024 at 10:10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2024 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2024, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, [Jeffrey.Prather@ky.gov](mailto:Jeffrey.Prather@ky.gov) or submit a comment at <https://secure.kentucky.gov/formservices/Nursing/PendReg>.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for continued approval of programs of nursing.

(b) The necessity of this administrative regulation: It is required by KRS 314.111.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: It updates the Annual Report and makes the report more generic to account for yearly reporting.

(b) The necessity of the amendment to this administrative regulation: To bring the annual reporting requirements into alignment with other compact states and the National Council of State Boards of Nursing (NCSBN) and make the report form more generic to account for yearly reporting without having to update the specific years subject to reporting, e.g. [YYYY], instead of "2022".

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.111 requires the Board to set standards and the annual report provides data regarding those standards.

(d) How the amendment will assist in the effective administration of the statutes: By streamlining and standardizing reporting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 80 approved pre-licensure nursing programs in the state 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: The questionnaire form and some questions are being updated, but the reporting requirement is the same.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The new report will simplify the reporting process.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It will not.

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE

(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? 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 314.111, KRS 314.131.

(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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: Difficult to estimate, but working time, materials, and energy spent producing annual report should be reduced.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact.

GENERAL GOVERNMENT CABINET  
Office of Homeland Security  
Kentucky 911 Services Board  
(Amendment)

202 KAR 6:090. Permitted uses by PSAPs for CMRS funds.

RELATES TO: KRS 65.7621, 65.7627, 65.7629(3)-(9), (13), 65.7631, 65.7635, 65.7639, 65.7643, 47 C.F.R. 1.9, 12, 20, 22, 25, 64, 9 U.S.C. 1-16, 47 U.S.C. 153(27), 332(d), FCC Order Docket #94-102, 1996, Kari's Law, and Section 506 of Ray Baum's Act, 2020

STATUTORY AUTHORITY: KRS 65.7633(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(2)(c) requires the Kentucky 911 Services Board to promulgate administrative regulations to establish guidelines to be followed by the board in reviewing, evaluating, and approving or disapproving disbursements from the CMRS fund and requests for disbursements under KRS 65.7631(4) and (5). KRS 65.7631(5) restricts the use of funds disbursed solely for the purposes of answering, routing, and properly disposing of CMRS 911 calls, training PSAP staff, public education, and complying with the wireless E911 service requirements established by the FCC. This administrative regulation establishes requirements to be followed by the board in its review and evaluation of disbursement requests by local 911 centers.

Section 1. Definitions.

(1) "AVL" means automatic vehicle location systems used to

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track emergency responder vehicles.

(2) "CAD" means computer aided dispatch systems used by 911 personnel to allocate and track emergency responder resources during a 911 call.

(3) "ECC" means an emergency call center.

(4) "EMS" means emergency medical system, which includes paramedics, emergency medical technicians, and other personnel and equipment used to respond to medical emergencies.

(5) "GIS" means Geographic Information Systems used to create, maintain, and manage graphic location data for use by PSAPs or services routing emergency calls to PSAPs.

(6) "LINK/NCIC" means the Law Enforcement Information Network of Kentucky and the National Crime Information Center, two (2) systems commonly used by law enforcement and emergency communications personnel for short messaging between agencies and to request vehicle, driver, and criminal history checks.

(7) "MSAG" means Master Street Address Guide, the database used by 911 centers to determine an emergency call's initial location.

(8) "Paging" means a hardware/software service that notifies first responders in the field originating in the PSAP. Reflects hardware/software or interface that connects with the CAD to notify first responders in the field.

(9) "PSAP" means a public safety answering point, certified 911 call center, a facility that has been designated to receive 911 calls and routes them to emergency service personnel.

(10) "VoIP" means voice over internet protocol.

Section 2. [Allocation of CMRS Funds.

(1) ~~Wireless only costs. CMRS funds may be expended for costs that are solely for the provision of enhanced 911 service involving calls from wireless consumers.~~

(2) ~~Wireline and wireless-shared costs. Costs for personnel, equipment, or facilities that are necessarily shared by calls to 911 from wireline and wireless users shall be prorated based on the percentage of call traffic attributed to calls from wireless users. CMRS funds may be used only for the wireless prorated portion.~~

(3) ~~Multifunction personnel, equipment, or facility shared costs. Expenses for personnel, equipment, or facilities that serve multiple functions or purposes shall be prorated. Only those costs for the prorated wireless portion directly involved in the delivery of 911 service shall be allowed.~~

Section 3. [Allowed 911 Center Operational Expenditures.

(1) Personnel costs. Costs for the following employees, to the extent their duties are directly attributable to delivery of 911 service, shall be allowed:

- (a) Positions allowed.
  1. Director;
  2. Supervisor;
  3. Dispatcher;
  4. Call-taker;
  5. Technical staff;
  6. Support staff; and
  7. Other staff involved in the provision of 911 service.

(b) Costs allowed.

- 1. Salaries;
- 2. Fringe benefits;
- 3. MSAG coordination;
- 4. Uniforms; and
- 5. Addressing/database development and management.

(2) Facility costs. Facility costs for the following expenses, to the extent it is directly attributable to delivery of 911 service, shall be allowed:

- (a) Capital improvements for construction, remodeling, or expansion;
- (b) Lease or rental payments;
- (c) Utilities;
- (d) Heating and air conditioning;
- (e) Fire suppression systems;
- (f) Security systems;
- (g) Cleaning and maintenance;
- (h) Emergency power and uninterruptible power equipment;

- (i) Insurance;
- (j) Office supplies;
- (k) Printing and copying services; and
- (l) Furniture.

(3) Training and memberships. Training and memberships in professional associations shall be allowed to the extent they are directly attributable to the enhancement of knowledge, skills, and abilities of 911 personnel in the provision of 911 service, including:

- (a) Vendor provided training;
- (b) Conferences;
- (c) Necessary travel and lodging;
- (d) On-the-job training; and
- (e) Memberships in 911 related associations, such as the Association of Public Communications Officials, or the National Emergency Number Association.

(4) Hardware, software, and peripheral equipment. Costs for the following equipment shall be allowed to the extent their function is directly attributable to the provision of 911 service, whether on the premises or remotely located:

- (a) 911 controllers, telephone equipment, or software;
- (b) 911 trunks or administrative lines for the PSAP;
- (c) Remote 911 hardware or modems;
- (d) Automatic call distribution (ACD) systems or other call management facilities and software;
- (e) Call-time stamping or other clock functions;
- (f) Computer workstations;
- (g) Telephone device for the deaf equipment;
- (h) Voice and data recording systems;
- (i) Radio systems, including consoles and infrastructure;
- (j) CAD, GIS/mapping software, equipment, and services, paging, paging peripherals, and field communication between first responders allowing connectivity to CAD to provide emergency communication to first responders in the field, mobile data, or LINK/NCIC, or AVL systems;
- (k) Associated databases;
- (l) Network connectivity;
- (m) Software licenses; and
- (n) Maintenance or service agreements for equipment or software listed in paragraphs (a) through (p) of this subsection.[-]

(o) Text and/or video to and from a PSAP/ECC;

(p) VoIP.

(5) Vehicle costs. Vehicle costs for the following, either as reimbursement to an employee for the use of a private vehicle or direct costs for a vehicle assigned to the agency, shall be allowed to the extent their use is directly attributable to the provision of 911 service:

- (a) MSAG and address development and maintenance;
- (b) GIS verification and testing; and
- (c) Public education.

(6) Professional services. Costs for the following professional services shall be allowed to the extent they are directly attributable to the provision of 911 related service:

- (a) Legal;
- (b) Architectural;
- (c) Auditing; ~~and~~
- (d) Consultation; and
- (e) GIS.

(7) Public education. Costs for public education regarding the proper use of 911 shall be allowed.

Section 3.[Section 4.] Not Allowed 911 Center Operational Expenses.

(1) Personnel costs. Personnel costs for the following personnel shall not be allowed, except if directly functioning as 911 center staff:

- (a) Law enforcement;
- (b) EMS personnel;
- (c) Fire personnel;
- (d) Emergency management staff; and
- (e) Shared support or technical staff.

(2) Facility costs. Facility costs for the following purposes and facilities shall not be allowed, except for that portion used for 911 operations.

(a) Capital and furnishing costs for facilities whose primary purpose is other than 911 operations;

(b) Facilities primarily intended for use by police, fire, EMS, or other emergency management personnel; and

(c) Facilities providing general offices for county or municipal government operations.

(3) Training and memberships.

(a) Costs for training for staff not directly involved in the delivery of 911 services or courses whose content is not intended to increase of the knowledge, skills, and abilities of 911 personnel in regard to delivery of 911 service shall not be allowed.

(b) Costs for memberships in organizations or associations whose primary purpose is other than public safety communications or 911 issues shall not be allowed.

(4) Hardware, software, and peripheral equipment. The following hardware, software, or peripheral equipment costs, unless directly attributable to the delivery of 911 service shall not be allowed:

(a) Law enforcement, fire, EMS, or jail record management systems;

(b) Word processing, databases, and other general computer applications;

(c) GIS applications providing data layers not needed for the location of emergency calls, or other general mapping and location services for government operations;

(d) Court information systems;

(e) Field equipment used outside of the 911 center by emergency responders or other government personnel for radio, paging, mobile data, LINK/NCIC, CAD, or AVL systems;

(f) Connectivity for an application listed in paragraphs (a) to (e) of this subsection;

(g) A maintenance or service agreement for an application listed in paragraphs (a) to (e) of this subsection; and

(h) Software license for an application listed in paragraphs (a) to (e) of this subsection.

(5) Vehicle costs. The cost of an emergency response or other government vehicle not directly attributable to the delivery of 911 service shall not be allowed.

(6) Professional services. Costs for professional services not directly attributable to the delivery of 911 service shall not be allowed.

(7) Public education. Costs for public education not directly attributable to the delivery of 911 service shall not be allowed.

(8) Radio infrastructure.

MIKE SUNSERI, Deputy Executive Director

APPROVED BY AGENCY: March 8, 2024

FILED WITH LRC: March 8, 2024 at 2:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2024, at 4:00 p.m. EST, at the Office of Homeland Security, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mike Sunseri, Deputy Executive Director, 200 Mero Street, Frankfort, Kentucky 40622, phone 502-892-3396, fax 502-564-7764; email mike.sunseri@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mike Sunseri

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation gives guidance for what is an allowable expenditure of CMRS funds by PSAPs and further defines what is not an allowable expenditure.

(b) The necessity of this administrative regulation: To ensure CMRS funds are used in accordance with federal and state laws.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation references the federal laws and state statutes that relate to appropriate expenditures of 911 fees collected.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is updated to reflect addition of federal laws adopted and FCC regulations and guidance. This regulation removes the necessity of proration of funds for cellular vs. local fee collection.

(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: The regulation change adheres to existing statute but updates to current technology standards.

(c) How the amendment conforms to the content of the authorizing statutes: Regulation update conforms with FCC laws and guidelines. 2022 HB 229 eliminated the requirement that CMRS funds only be used for wireless 911 calls.

(d) How the amendment will assist in the effective administration of the statutes: Allow 911 Services Board to provide better guidance for allowable expenditures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified PSAPs and ECCs 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: review the updated allowable and non-allowable expenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$0

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ensure compliance with FCC rules.

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

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: CMRS 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: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? No tiering is applied. Allowable expenditures for CMRS Funds apply to all certified PSAPs in the state.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 9 U.S.C. 1-16, 47 U.S.C. 153(27), 332(d), FCC Order Docket #94-102, 1996, Kari's Law, and Section 506 of Ray Baum's Act.

(2) State compliance standards. N/A

(3) Minimum or uniform standards contained in the federal mandate. N/A

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE

(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? All PSAPs in the state and city or county governments that oversee them.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 65.7621, 65.7627, 65.7629(3)-(9), (13), 65.7631, 65.7635, 65.7639, 65.7643, 9 U.S.C. 1-16, 47 U.S.C. 153(27), 332(d), FCC Order Docket #94-102, 1996, Kari's Law, and Section 506 of Ray Baum's Act.

(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. Undeterminable.

(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? None

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? \$0

(c) How much will it cost the regulated entities for the first year? \$0

(d) How much will it cost the regulated entities for subsequent years? \$0

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] There will be no economic impact by the revision of this regulation.

TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(Amendment)

301 KAR 2:122. Seasons, methods, and limits for small game.

RELATES TO: KRS 150.340, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Kentucky Department of Fish and Wildlife Resources ~~(department)~~ to promulgate administrative regulations to establish seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. This administrative regulation establishes seasons, bag limits, and methods of take for small game.

Section 1. Definitions.

(1) "Eastern Zone" means the third through the ninth wildlife districts as established in 301 KAR 4:010.

(2) "Grouse Zone" means the area consisting of Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe Counties.

(3) "Modern gun deer season" means the season as established in 301 KAR 2:172.

(4) "Rabbit" means an eastern cottontail rabbit, swamp rabbit, or Appalachian cottontail rabbit.

(5) "Small game" means squirrels, rabbits, northern bobwhite, or ruffed grouse.

(6) "Squirrel" means a gray squirrel or fox squirrel.

(7) "Western Zone" means the first and second wildlife districts as established in 301 KAR 4:010.

Section 2. Methods of Harvest for Small Game.

(1) A person shall use any of the following to take small game:

(a) Rimfire gun or rimfire handgun;

(b) Shotguns no larger than 10-gauge;

(c) Muzzle-loading gun;

(d) .410-gauge handgun;

(e) Bow and arrow;

(f) Crossbow;

(g) The following caliber air-guns with pellets:

1. .177;

2. .20;

3. .22; or

4. .25;

(h) Slingshot with manufactured hunting ammunition;

(i) Dogs;

(j) Falconry, pursuant to 301 KAR 2:195; or

(k) Trapping, pursuant to Section 5 of this administrative regulation, for:

1. Rabbits; or

2. Squirrel.

(2) A person shall not use the following to take small game:

(a) A shotgun shell containing a shot size larger than number two (2); or

(b) Single projectile shotgun ammunition.

Section 3. Small Game Hunting Seasons.

(1) Except as established in 301 KAR 2:049, a person shall not take small game except during the dates specified in this section.

(2) Small game taken by falconry: September 1 through March 30.

(3) Squirrel:

(a) The third Saturday in May through the third ~~Sunday~~[Friday] in June; and

(b) The third Saturday in August through the last day of February, except the season shall be closed during the first two (2) days of modern gun deer season.

(4) Rabbit and northern bobwhite:

(a) Western Zone: the third day of modern gun deer season through February 10.

(b) Eastern Zone: November 1 until January 31, except the season shall be closed during the first two (2) days of modern gun deer season.

(5) Ruffed Grouse: November 1 through the last day of February in the Grouse Zone, except the season shall be closed during the first two (2) days of modern gun deer season.

(6) There shall not be a closed season for chasing rabbits during daylight hours for sport and not to kill.

(7) Free youth week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting or trapping license, but shall be in compliance with all other statewide requirements.

#### Section 4. Limits and Other Requirements.

(1) The small game possession limits shall be twice the daily bag limits.

(2) Daily bag limits:

(a) Squirrel: six (6);

(b) Rabbit: four (4);

(c) Northern bobwhite: eight (8); and

(d) Ruffed grouse: four (4).

(3) A falconer hunting outside any of the dates specified in Section 3(3) and (4) of this administrative regulation shall not take more than two (2) small game animals per day.

(4) A person shall hunt small game during daylight hours only.

Section 5. Trapping for Squirrel and Rabbit. A person trapping for squirrel or rabbit shall:

(1) Comply with the requirements established in 301 KAR 2:251;

(2) Only trap when the small game hunting season and trapping season overlap;

(3) Possess a trapping license;

(4) Comply with daily bag and possession limits pursuant to Section 4 of this administrative regulation; and

(5) Harvest squirrel and rabbits upon capture, except for a person possessing a valid captive wildlife permit, pursuant to 301 KAR 2:081.

RICH STORM, Commissioner

APPROVED BY AGENCY: March 15, 2024

FILED WITH LRC: March 15, 2024

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 31, 2024, at 9:30 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes seasons, bag limits, and methods of take for small game.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage wildlife populations in Kentucky, specifically those designated as small game.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(l)(h) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150. KRS 150.025(1) authorizes Kentucky Department of Fish and Wildlife Resources to promulgate administrative regulations to establish seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing requirements for the taking of small game.

(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 fix punctuation or grammatical errors in the existing regulation. This amendment also extends the season for small game by two days through the third Sunday in June.

(b) The necessity of the amendment to this administrative regulation: See (2) (a) above.

(c) How the amendment conforms to the content of the authorizing statutes: See (1) (c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1) (d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone hunting small game 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: Individuals will have to follow regulations in place for hunting small game.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): n/a

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fish and Game 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:

There will not be any increase of fees or funding 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 indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all hunters are subject to the same restrictions.

FISCAL NOTE

(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 Fish and Wildlife Resources

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.340, 150.360, 150.370, 150.990

(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.

(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 for the 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? No revenue will be generated for the state or local government.

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

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

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment will not generate any cost savings for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This amendment will not generate any cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no costs to regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no costs to regulated entities for subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]: This amendment will not have a major economic impact as there will be no change to expenditures or fees.

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(Amendment)**

**301 KAR 5:040. Migratory Bird Harvest Information Program.**

RELATES TO: KRS 150.235, 150.603(1), (2)

STATUTORY AUTHORITY: KRS 150.195(1), 50 C.F.R. 20.20

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195(1) authorizes the Kentucky Department of Fish and Wildlife Resources[department] to promulgate administrative regulations

that provide for the design, issuance, distribution, and other matters relating to all licenses and permits. 50 C.F.R. 20.20 requires that waterfowl or migratory shore and upland game bird hunters participate in a national harvest survey. This administrative regulation establishes the requirements for hunters participating in the Migratory Bird Harvest Information Program.

Section 1. Definition. "The Migratory Bird Harvest Information Program" means an online survey that a person completes prior to legally hunting waterfowl or migratory shore or[and] upland game birds.

Section 2. (1) Prior to hunting waterfowl or migratory shore or[and] upland game birds, a person shall obtain a Migratory Bird Harvest Information Program verification number by completing the Migratory Bird Harvest Information Program Survey on the department's Web site at fw.ky.gov.

(2) A person shall possess the survey verification number established in subsection (1) of this section while hunting waterfowl or migratory shore and upland game birds.

Section 3. Incorporation by Reference.

(1) The "Migratory Bird Harvest Information Program Survey" form, 2016 edition, is incorporated by reference.

(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.

RICH STORM, Commissioner

APPROVED BY AGENCY: March 15, 2024

FILED WITH LRC: March 15, 2024 at 10:26 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 31, 2024, at 9:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for hunters participating in the Migratory Bird Harvest Information Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all migratory bird hunters operate within the law and participate in survey data as required in 50 C.F.R 20.20.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.195(1) authorizes the department to promulgate administrative regulations that provide for the design, issuance, distribution, and other matters relating to all licenses and permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing requirements for migratory bird hunting and survey response.

(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: There is no change to the substance of the regulation. The amendments are to improve the readability of the regulation and to bring the regulation in line with current drafting styles to be consistent with other recently enacted regulations.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to modernize the drafting style and improve readability.

(c) How the amendment conforms to the content of the authorizing statutes: See (1) (c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1) (d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Migratory bird hunters

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no new requirements for migratory bird hunters in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be in compliance with federal migratory bird hunting requirements which require the survey.

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

(a) Initially: There will be no additional initial costs.

(b) On a continuing basis: There will be no additional continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Fish and Game 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 necessary. The amendments do not create any new obligations for the individual hunters or the agency.

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

(9) TIERING: Is tiering applied? No, all individuals must comply with the same requirements.

FISCAL NOTE

(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 Fish and Wildlife Resources

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.195, 50 C.F.R. 20.20

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no added costs to administer the program, as amended, for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no added costs to administer the program, as amended, in subsequent years.

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

Revenues (+/-): No change should occur.

Expenditures (+/-): No change should occur.

Other Explanation: This amendment only contains semantic changes, therefore no change to revenue or expenditures are expected.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no cost savings for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no cost savings for subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no added costs for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no added costs for subsequent years.

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

Cost Savings (+/-): No change should occur.

Expenditures (+/-): No change should occur.

Other Explanation: This amendment only contains semantic changes, therefore no change to revenue or expenditures are expected.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]: There will not be a major economic impact as the amendments do not create, increase, reduce, or eliminate any costs to any individual or organization.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 50 C.F.R 20.20 Migratory Bird Harvest Information Program.

(2) State compliance standards. The Department of Fish and Wildlife Resources sets requirements for collection of information under frameworks established by the US Fish and Wildlife Service in 50 C.F.R. 20.20 and approved by the Office of Management and Budget; clearance number 1018-0015.

(3) Minimum or uniform standards contained in the federal mandate. 50 C.F.R 20.20 mandates that the Department of Fish and Wildlife Resources require each person hunting migratory game birds in Kentucky must have identified himself or herself as a migratory bird hunter and given his or her name, address, and date of birth to the Department. That hunter must have on his or her person evidence, provided by the Department, of compliance with this requirement. Further, the Department must ask each licensed migratory bird hunter in Kentucky to report approximately how many ducks, geese, doves, and woodcock he or she bagged the previous year, whether he or she hunted coots, snipe, rails, and/or gallinules the previous year.

(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. N/A



**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(Amendment)**

**810 KAR 7:040. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.**

RELATES TO: KRS 230.215, 230.260, 230.770, 230.802  
STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting. KRS 230.770(1) establishes the Kentucky standardbred development fund. KRS 230.770(6) and (7) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky standardbred breeders' incentive fund. KRS 230.802(2)(b) requires the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, criteria for the distribution of moneys from these funds, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions.

- (1) "Commission" means the Kentucky Horse Racing Commission.
- (2) "Consolation" means the race following a series of preliminary legs for the next preferred horses, as established in Section 6 of this administrative regulation, which did not qualify for the finals of each racing division of the Kentucky Sire Stakes program.
- (3) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sire Stakes Program.
- (4) "Kentucky-bred" means a standardbred horse that is:
  - (a) Foaled out of a standardbred mare that is registered with the commission ~~and meets the requirements of this administrative regulation~~; or
  - (b) Sired by a standardbred stallion standing~~[residing]~~ in Kentucky that is registered with the commission~~[that meets the requirements of this administrative regulation]~~.
- (5) "Kentucky Sire Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year old Kentucky-bred fillies and colts, both trotting and pacing, and funded in whole or in part by the Kentucky Standardbred Development Fund or the Kentucky Standardbred Breeders' Incentive Fund.
- (6) "KSBIF" means the Kentucky Standardbred Breeders' Incentive Fund as established in KRS 230.802.
- (7) "KSDF" means the Kentucky Standardbred Development Fund as established in KRS 230.770.
- (8) "Stallion standing~~[residing]~~ in Kentucky" means a stallion physically located and standing in Kentucky for 180 days of the calendar year in which the stallion is registered with the commission ~~[that] does not service mares in any other state, jurisdiction, or country~~ outside Kentucky during the calendar year in which the stallion is registered.
- (9) "USTA" means the United States Trotting Association.

Section 2. Domicile Requirements.

- (1)
  - (a) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion residing in Kentucky who desires to use the stallion to breed and to have his progeny eligible for the KSDF or

KSBIF shall register the stallion with the commission by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBIF Stallion Certificate of Eligibility Form", KHRC 7-040-2.

(b) Standardbred stallions not residing in Kentucky are not required to register with the commission. The progeny of a standardbred stallion not residing in Kentucky is not eligible for the KSDF or KSBIF unless the progeny is that of a standardbred mare registered under and meeting the requirements of this administrative regulation.

(c) All standardbred stallions shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency whether residing in Kentucky or not.

(2)

(a) An owner, lessee, manager, or syndicate manager of a standardbred mare who desires to use the mare for breeding purposes and to have her progeny eligible for the KSDF or KSBIF shall register the mare by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC 7-040-3.

(b) To be eligible for registration, the mare shall:

1. Be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency; and
2. Have resided in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(c) If a horse is conceived by embryo and ovum transplant (ET), both the donor mare and recipient mare shall be registered during the year of conception, and the recipient mare shall reside in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(3) Registrations shall be received by the commission by the close of business or postmarked on the deadline established in this section in order to be eligible.

(4) An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBIF shall be responsible for:

- (a) The registrations and records of the farm where the stallion stands or the mare resides; and
- (b) Complying with all applicable requirements of this administrative regulation.

Section 3. Eligibility.

(1) In order to qualify for the Kentucky Sire Stakes, a foal shall be a two (2) or three (3) year old Kentucky-bred and shall maintain eligibility for the KSDF and KSBIF as established in Sections 16, 19, and 20 of this administrative regulation.

(2) Notwithstanding the foregoing, semen from a stallion standing in Kentucky may be shipped to mares in any jurisdiction outside of Kentucky at any time during the calendar year in which the stallion is registered. Additionally, a registered stallion may shuttle to countries in the Southern Hemisphere to service mares, provided the stallion meets all other standing requirements. But, a registered stallion shall not service mares in any country, other than the United States or countries in the Southern Hemisphere by way of shuttle. Also, a registered stallion shall not shuttle to any state or jurisdiction in North America, other than Kentucky, in order to service mares. The changes in this subsection are effective starting with the 2020 breeding season and in subsequent years.

(3)

(a) Except as provided by paragraph (b) of this subsection, only a foal that is the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo and ovum transplant (ET), shall be eligible for the Kentucky Sire Stakes.

(b) Natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare shall also be eligible.

~~(4)~~<sup>(3)</sup> Any future offspring of foals eligible for racing under this section shall be ineligible for the Kentucky Sire Stakes.

Section 4. Distance. Each Kentucky Sire Stakes race shall be a one (1) mile dash.

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Section 5. Post Positions. Post positions for the final, consolation, and all preliminary legs of the Kentucky Sire Stakes race shall be an open draw with two (2) horses drawn for the final and consolation races that are designated as "also eligibles" under Section 6(7) of this administrative regulation.

### Section 6. Eligibility for the Final and Consolation Races.

(1) Beginning with the 2018 Kentucky Sire Stakes races, consolation races may be eligible for funding.

(2) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final or consolation.

(a) All horses earning points may enter in the final with:

1. The top eight (8) point earners, if the horses raced on a half (1/2) mile track or five-eighths (5/8) mile track; or

2. Top ten (10) point earners, if the horses raced on a one (1) mile track, to be declared eligible.

(b) On a half (1/2) mile track or five-eighths (5/8) mile track, the top eight (8) point earners shall not be eligible for the consolation. On a one (1) mile track, the top ten (10) point earners shall not be eligible for the consolation.

(c) A horse that is eligible to race in the final shall only be eligible to race in the final, unless the horse is qualified as an also eligible.

(d) A horse that is eligible to race in the consolation shall only be eligible to race in the consolation, unless qualified in the final as an also eligible.

(e) A horse that scratches from the final shall not race in the consolation.

(f) A horse that has qualified for the final or consolation shall remain eligible for the final or consolation.

(g) At least seven (7) eligible horses shall be declared for a consolation race to be contested.

(h) A horse that is automatically eligible to race in the final race shall not start in the consolation race.

(3) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements established in subsection (2) of this section and toward determining tiebreaker status as established in subsection (6)(b) of this section.

(4) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements established in subsection (2) of this section.

(5) A horse, in order to start in the final or consolation, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

(6)

(a) If the number of horses eligible and declared into any final or consolation event exceeds the maximum number specified by the KSDF or KSBIF or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

1. 1st place - fifty (50) points;
2. 2nd place - twenty-five (25) points;
3. 3rd place - twelve (12) points;
4. 4th place - eight (8) points;
5. 5th place - five (5) points;
6. 6th place and all other starters - one (1) point; and

7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(b) If there is a tie among horses after the awarding of points pursuant to paragraph (a) of this subsection, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.

(c) If a horse that is qualified for the final or consolation is not declared, the horse with the next highest point total, pursuant to paragraph (a) of this subsection, that is declared shall be eligible for the final or consolation.

(7) Also eligibles.

(a) The two (2) horses accumulating the highest point total, pursuant to subsection (6) of this section, that are declared into the final or consolation, but do not qualify for the final or consolation, shall be designated "also eligible". The horse with the highest point

total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final or consolation shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final or consolation as a replacement after the official scratch time deadline that is in effect at the host track.

Section 7. Final Order of Finish. The judges' "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry box for final events.

Section 8. Detention. All starters shall be subject to the detention policy of the racetrack.

### Section 9. Number of Starters.

(1) There shall not be more than:

(a) Ten (10) starters in each final race on a one (1) mile track; and

(b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.

(2) All horses shall be on the gate for the final race.

### Section 10. Declaration Fees.

(1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of one-half of one percent (0.5%) of the total purses distributed or to be distributed for each race in which the horse is declared.

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the KSDF and KSBIF shall consist of money from:

(a) Nominating fees;

(b) Sustaining fees;

(c) Declaration fees; and

(d) Added money from the Commonwealth of Kentucky.

(4)

(a) Distribution of revenue for Kentucky Sire Stakes races shall be reviewed and addressed annually, not later than December 15 of each calendar year, by an advisory panel appointed by the Chairman of the commission and consisting of one (1) representative from each of the following:

1. The commission, who shall serve as the chairman of the panel;

2. The Kentucky Harness Horseman's Association;

3. The Kentucky Harness Association;

4. The host racetrack; and

5. One (1) participant in the fund nominated by the chairman of the commission from a group of up to four (4) nominees recommended by each of the above four (4) members having one (1) nomination each.

(b) Each member of the panel shall serve from July 1 through June 30 of the following year and shall be a resident of Kentucky.

(c) The final determination regarding distribution of revenue shall be made by the commission.

### Section 11. Divisions of Preliminary Legs.

(1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:

1. Twelve (12) horses or less entered - one (1) division race.

2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.

3. Twenty-one (21) to thirty (30) horses entered - three (3)

divisions.

4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.
5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.
6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.  
(b) One-half (1/2) and five-eighths (5/8) mile track:
  1. Nine (9) to ten (10) horses entered - one (1) division.
  2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.
  3. Seventeen (17) to twenty-four (24) horses entered - three (3)

divisions.

4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.
5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.
6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.

(c) If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.

#### Section 12. Gait.

(1) Gait shall be specified by the owner of the horse on or before the first two (2) year old payment.

(2)

(a) Change of gait may be made at the time of declaration at the track.

(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 13. Divisions. A race shall be raced in separate divisions as follows:

- (1) Colt, gelding, ridgeling divisions; and
- (2) Filly divisions.

#### Section 14. Purse Distributions.

(1) The purses awarded for all races shall be distributed on the following percentage basis:

(a) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(b) Four (4) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund;

(c) Three (3) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13) percent reverts back to the fund;

(d) Two (2) starters - fifty (50) percent, and twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund; and

(e) One (1) starter - fifty (50) percent, and the remaining fifty (50) percent reverts back to the fund.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

#### Section 15. Cancellations.

(1) If circumstances prevent the racing of an event and the race is not drawn, all funds allocated to the division in each of the preliminary legs or the final shall be refunded and prorated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 20 of this administrative regulation.

(3) The added monies provided by the Commonwealth of Kentucky for use in the KSDF and KSBIF shall be disbursed by December 15 of each calendar year in accordance with the formula created by the panel as set out in Section 10(4) of this administrative regulation.

#### Section 16. Qualifying.

(1) Any horse declared into a Kentucky Sires Stakes race shall:

(a) Show at least one (1) charted race line with no breaks within forty-five (45) days prior to the day of the race; and

(b) Have satisfied the following time requirements:

1. On a track larger than five-eighths (5/8) of a mile:

a. A two (2) year old trotter shall have been timed in two minutes

and six seconds (2:06) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and four seconds (2:04) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and two seconds (2:02) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and zero seconds (2:00) or faster.

2. On a five-eighths (5/8) mile track:

a. A two (2) year old trotter shall have been timed in two minutes and seven seconds (2:07) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and five seconds (2:05) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and three seconds (2:03) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and one second (2:01) or faster.

3. On a one-half (1/2) mile track:

a. A two (2) year old trotter shall have been timed in two minutes and eight seconds (2:08) or faster;

b. A two (2) year old pacer shall have been timed in two minutes and six seconds (2:06) or faster;

c. A three (3) year old trotter shall have been timed in two minutes and four seconds (2:04) or faster; and

d. A three (3) year old pacer shall have been timed in two minutes and two seconds (2:02) or faster.

(2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.

(3) The requirements of this section shall apply both to wagering and nonwagering races.

#### Section 17. Purse Allocations.

(1) At a scheduled meeting of the commission, the commission shall:

(a) Establish the distribution of funds for stakes races for the upcoming year; and

(b) Authorize expenditures at a time it designates.

(2) The racing dates for KSDF and KSBIF stakes shall be issued after the track has established its race dates.

Section 18. Promotions. The KSDF or KSBIF may provide a trophy for each event, and the program that provides the trophy shall purchase the trophy out of its fund.

#### Section 19. Nomination Fees.

(1) After payment of the mare or stallion nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year, as set forth in Section 20. The "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, shall be filed with the commission along with the nomination and sustaining fees.

(2) After payment of the yearling nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year, as set forth in Section 20. The "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, shall be filed with the commission along with the nomination and sustaining fees.

(3) The two (2) year old March 15 payment shall be made to remain eligible to the KSDF and KSBIF as a three (3) year old without penalty, except as provided in Section 20.

(4) Nomination and sustaining payments shall be made to the KSDF and KSBIF in U.S. funds by a money order or a check drawn on a U.S. bank account.

#### Section 20. Nomination Schedule.

(1) Mares or Stallions shall be nominated by December 31 of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBIF Stallion Certificate of Eligibility Form," KHRC 7-040-2, or "KSDF/KSBIF Mare Certificate of Eligibility Form," KHRC 7-040-3. The nomination fee shall be set forth in KHRC 7-040-2 or 7-040-3, except as provided in subsection (4) of this section.

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(2) For yearlings sired by a standardbred stallion or mare that resided in Kentucky during the year of conception for a period no less than 180 days and registered with the KSDF and KSBIF, the nomination fee shall be set forth in the "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, except as provided in subsection (5) of this section.

(3) Nominated horses shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall be properly identified to the satisfaction of the commission at the time of the nomination. Identification shall be determined by the official registration maintained by the USTA, Standardbred Canada, or other appropriate international harness racing governing agency.

(4) If a mare is not nominated to the KSDF and KSBIF by December 31 of the year of conception, the mare shall be nominated by submitting a KSDF/KSBIF Application for Late Mare Registration, KHRC 7-040-4, and paying a penalty as set forth in KHRC 7-040-4.

(5) If a horse sired by a standardbred stallion or mare that resided in Kentucky during the year of conception, for a period no less than 180 days, and registered with the KSDF and KSBIF is not nominated during its yearling year, the horse may be nominated by March 15 of its two (2) year old year by submitting the "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, and paying a penalty as set forth in KHRC 7-040-1.

(6) For three (3) year old horses that fail to make the mandatory March 15 two (2) year old sustaining payment, the horse may be nominated by February 15 of its three (3) year old year by submitting a KHRC 7-040-1 and paying a penalty as set forth in KHRC 7-040-1.

Section 21. Early Closing Events. The commission may provide for separate early closing events for Kentucky-bred horses.

Section 22. Stallion and Breeder Awards. The commission may provide for stallion and breeder awards for Kentucky-bred horses.

### Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 7-040-1, 2023;

(b) "KSDF/KSBIF Stallion Certificate of Eligibility Form", KHRC 7-040-2, 2023;

(c) "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC 7-040-3, 2023; and

(d) "KSDF/KSBIF Application for Late Mare Registration", KHRC 7-040-4, 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at [https://khrc.ky.gov/new\\_docs.aspx?cat=32](https://khrc.ky.gov/new_docs.aspx?cat=32).

JONATHAN RABINOWITZ, Chair

RAY PERRY, Secretary

APPROVED BY AGENCY: March 13, 2024

FILED WITH LRC: March 14, 2024 at 9:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2024, at 9:00 a.m. Eastern, at the Kentucky Horse Racing Commission, 4047 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jennifer Wolsing, General Counsel,

Kentucky Horse Racing Commission, 4047 Iron Works Parkway, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [jennifer.wolsing@ky.gov](mailto: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 prescribes the conditions under which standardbred racing shall be conducted in Kentucky. Specifically, KRS 230.770(6) authorizes the commission to promulgate regulations establishing the eligibility requirements for horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund ("KSDF/KSBIF"). This particular regulation establishes the eligibility requirements to receive funds from KSDF/KSBIF.

(b) The necessity of this administrative regulation: This regulation is necessary to exercise the statutory authority of the KHRC to "promulgate administrative regulations prescribing conditions under which all legitimate standardbred horse racing and wagering thereon is conducted in the Commonwealth of Kentucky" KRS 230.215(2). This regulation is also necessary to exercise the KHRC's statutory authority to establish the eligibility requirements for those desiring to receive distributions from the KSDF/KSBIF. KRS 230.240(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority granted to the Kentucky Horse Racing Commission by KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), and KRS 230.802(2)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by outlining the qualifications a horse owner and breeder need to follow to be eligible to receive KSDF/KSBIF monies.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments to this regulation make the following changes:

Section 1: amend the definition of "Kentucky-bred" and amend the definition of "stallion residing in Kentucky"; and  
Section 3: clarify a foal's eligibility requirements for the Sire Stakes and clarify the Panel and the Commission's intent that participating stallions may ship semen and shuttle to South America. These changes are effective starting in the 2020 breeding season; i.e., the beginning of the program.

(b) The necessity of the amendment to this administrative regulation: These proposed amendments are necessary to modernize definitions, clarify eligibility requirements, and allow participating stallions to ship semen and shuttle to South America.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.770(6) authorizes the commission to promulgate regulations establishing the eligibility requirements for horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive. This regulation updates and clarifies eligibility requirements for participating stallions.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will provide incentives for stallion owners to stand their horses in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect standardbred breeders; 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; and state and local payroll tax.

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

(a) List the actions that each of the regulated entities identified in

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question (3) will have to take to comply with this administrative regulation or amendment: Stallion owners may, if they choose, ship semen or shuttle their stallion to South America for live cover, provided all other program requirements are met.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated as a result of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If stallion owners participate in the program, they will have the options to ship semen or shuttle their stallions to South America for live cover.

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

(a) Initially: There is no initial cost to implement the proposed amendments in the first year.

(b) On a continuing basis: There is no continuing cost to implement the proposed amendments on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The nomination fees are used for the implementation and enforcement 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: An increase of fees or funding is not necessary to implement these proposed amendments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fee changes in the proposed amendments to this regulation.

(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

(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. The statutory authority for this administrative regulation is found in KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendments to this regulation may generate additional revenue for the KHRC. Clarifying that the KHRC allows participating stallion owners to ship semen and shuttle their stallions to South America may incentivize more program participation. It is unclear how many additional owners may participate in the first year as a result of this clarification.

(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 amendments to this regulation may generate additional revenue for the KHRC. Clarifying that the KHRC allows participating stallion owners to ship semen and shuttle their stallions to South America may incentivize more program participation. It is unclear how many additional owners may participate in subsequent years as a result of this clarification.

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a

brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown potential increase

Expenditures (+/-): Neutral

Other Explanation: It is unclear how many additional owners may participate in the program as a result of these proposed amendments and clarifications.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This regulation is not anticipated to generate cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This regulation is not anticipated to generate cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? This regulation is not anticipated to generate additional costs in the first year.

(d) How much will it cost the regulated entities for subsequent years? This regulation is not anticipated to generate additional costs in subsequent years.

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

Cost Savings (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This regulation is not anticipated to have a major economic impact, as established in the responses to the above questions.

NEW ADMINISTRATIVE REGULATIONS

Public comment periods ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

**Cabinet for General Government  
Department of State  
Office of Business Services  
(New Administrative Regulation)**

**30 KAR 7:011. Standard form for occupational license fee return.**

RELATES TO: KRS 67.750, 67.767

STATUTORY AUTHORITY: KRS 67.767(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 67.767(1)(a) requires the Secretary of State to promulgate an administrative regulation prescribing a standard form that shall be accepted by all tax districts and shall allow for returns of net profits and gross receipts occupational license taxes by all business entities, as well as instructions for completing the form. This administrative regulation prescribes the standard form for occupational license tax returns and form instructions as mandated by KRS 67.767(1)(a).

Section 1. Definitions.

- (1) "Business entity" is defined by KRS 67.750(1).
- (2) "Tax district" is defined by KRS 67.750(10).

Section 2. A business entity shall:

- (1) Follow the filing requirements specified by the business entity's local tax district; and
- (2) Use the Form OL-S, Single Tax District, Occupational License Fee Return and Instructions to report business and occupational license taxes to the business entity's local tax district, if so required.

Section 3. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Form OL-S, Single Tax District, Occupational License Fee Return", July 8, 2016; and
  - (b) "General Instructions for Form OL-S for a Single Tax District", July 8, 2016.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained from the Secretary of State's Web site at <http://www.sos.ky.gov>.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: February 29, 2024

FILED WITH LRC: February 29, 2024 at 2:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2024, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email [michael.wilson@ky.gov](mailto:michael.wilson@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation promulgates a standard occupational license fee form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 67.767(1)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to existing statutory provisions by providing a standard form for the payment of occupational license fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promulgates the standard form that is used by tax districts that have enacted an occupational license fee.

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

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will provide a uniform standard occupational license fee reporting form for use by individuals, businesses, organizations, and state and local governments that will enable compliance across tax districts in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Tax districts are required to accept the standard form promulgated by this administrative regulation unless they request an exemption.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated there will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is anticipated there will be a benefit of uniformity among tax districts and fidelity to the intent of the statutory provisions.

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

(a) Initially: There will be no costs to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing appropriations and fund sources for the Office of the Secretary of State.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to similarly situated individuals and entities regulated by it.

FISCAL NOTE

(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 not impact the units, parts or divisions of state or local government because they either previously adopted it or developed their own form.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 67.767.

(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 additional revenue for state or local governments during the first year.

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

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

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

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No fiscal impact is anticipated.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13) No major economic impact is anticipated.

OFFICE OF THE ATTORNEY GENERAL  
Department of Criminal Investigations  
(New Administrative Regulation)

40 KAR 10:010. Uniform procedure and timeline for conducting independent election inquiries.

RELATES TO: KRS 15.243, 15.180, 15.242, 117.035, 119.005  
STATUTORY AUTHORITY: KRS 15.243

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.243(3)(b) authorizes the Attorney General to promulgate administrative regulations in accordance with KRS Chapter 13A to establish a uniform procedure and timeline for his or her agents to follow when conducting independent election inquiries. This administrative regulation establishes election inquiry requirements including the data and forms that shall be requested from each county that is chosen for a random independent election inquiry pursuant to KRS 15.243(3)(a).

Section 1. Definitions.

(1) "Agent" means an Investigator with the Department of Criminal Investigations, Office of Attorney General.

(2) "Ballot" or "official ballot" is defined by KRS 117.001(3).

(3) "Ballot box" is defined by KRS 117.001(4).

(4) "County" means the county clerk's office that has been randomly chosen for an independent inquiry pursuant to KRS 15.243(3)(a).

(5) "Election" or "elections" is defined by KRS 117.001(6).

(6) "Election officer"(s) is defined by KRS 118.015(5).

(7) "Federal provisional voter" is defined by KRS 117.001(9).

(8) "Independent Inquiry" means an audit of specified data and forms from the subject county clerk's office as well as interviews with associated personnel and citizens in order to ensure the integrity of election procedures within that county for the applicable election.

(9) "Office" means the Office of Attorney General.

(10) "Voter" is defined by KRS 116.013.

Section 2. Uniform procedure for conducting a post-election independent inquiry includes the following:

(1) Notification to the county of randomly drawn post-election independent inquiry;

(2) Notification to county officials, workers, and voters of status of county as randomly drawn for independent inquiry;

(3) Request to the county and the election officers of that county for copies of designated county election documents and data;

(4) If a request of county election documents and data would yield a potentially large number of documents, a random sample size of said materials may be requested by the office in lieu of all documents; and

(5) If circumstances dictate, and at discretion of the office:

(a) The County Board of Elections ("CBE") may be requested to conduct a recount of a chosen precinct; and

(b) The agent may request any other materials, documents, data, or interviews bearing upon any issues that may or may not arise during an independent inquiry.

Section 3. Uniform Timeline for Conducting a Post-election Independent Inquiry.

(1) The office shall conduct a random public drawing of no fewer than twelve (12) Kentucky counties within twenty (20) days following each primary or regular election pursuant to KRS 15.243(3)(a).

(2) Letters of notification to each county of the randomly selected Kentucky counties shall be mailed out within ten (10) working days from the random drawing date.

(3) The agent shall make the request in writing to the county.

(4) The county shall provide all requested materials, papers, forms, interviews, and documents to the agent no later than twenty (20) days after the request.

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(5) If the county requires more than twenty (20) days to provide all requested materials, papers, forms, interviews, and documents to the office, the county shall notify the office in writing of the need for more time in which to fulfill the request. The county shall state the reason for the needed extra time within the request.

(6) The office shall have a reasonable time in which to complete a thorough and complete independent inquiry for each randomly selected county, but said time shall not exceed 120 working days.

(7) If an independent inquiry exceeds 120 working days, excluding weekends and holidays, then the office shall indicate in its investigation file the specific reasons for which more than 120 working days was required for a full and complete investigative inquiry.

(8) The original 120 working day investigative timeframe absent any extensions of time, shall be separate and apart from time to present the independent inquiries to the grand juries in each respective county as required by KRS 15.243(3)(c).

Section 4. Required materials, papers, forms, interviews, and documents includes but is not limited to the following:

(1) Copy of the county's voluntary election planning report previously submitted to the State Board of Elections ("SBE") including confirmation or proof of SBE approval;

(2) Details of the election plan's implementations;

(3) All necessary modifications made to the election plan made after its approval by SBE;

(4) Copy of SBE form 74 titled "Petition to Consolidate Precinct and Precinct Election Officers";

(5) Confirmation and proof of advertising and posting of absentee voting information per KRS 117.076(4) pursuant to KRS 424.130;

(6) Confirmation of advertising and posting for the CBE to examine election equipment per KRS 117.165 pursuant to KRS 424.130(1)(d);

(7) Contact information for all CBE members for each randomly drawn county;

(8) SBE form 31, the "Voter Assistance Form" for each randomly drawn county;

(9) SBE form 33A, "List of Voters Issued Absentee Ballots" for each randomly drawn county;

(10) SBE form 33B, "Rejected Ballots" for each randomly drawn county;

(11) List and address of all voting centers or precinct locations for each randomly drawn county;

(12) An accounting of the total number of voters checked in and the total number of ballots cast, which shall include:

(a) Supplemental rosters;

(b) In-person excused absentee ballots;

(c) In-person machine absentee ballots;

(d) Early day voting ballots;

(e) Election day ballots; and

(f) Federal provisional voter ballots, if applicable, from all early voting days as well as election day;

(13) A copy of all SBE 44A forms, and/or a list of all voters who have been issued a mail-in absentee ballot under SBE 44A, with any applications for such ballot to be produced to the office at the discretion of the agent;

(14) The total number of all mail-in absentee ballot applications received, ballots thereafter printed, ballots sent to voters, ballots returned to the county via United States Post Office (USPS) or by drop-box, and all ballots rejected by county;

(15) An absentee ballot grand total report;

(16) "Oath of Voter" forms (SBE 32);

(17) "Precinct Election Sheriff's Postelection Report" (SBE 53 form);

(18) "Precinct Election Sheriff's Postelection Statistical Report" (SBE 54A form);

(19) The "County Board of Elections Postelection Report" (SBE 54 form);

(20) The CBE Elections Totals Report;

(21) Copies of the CBE annual meeting minutes;

(22) Voter registration and election turnout statistics;

(23) The county clerk grand jury report; and

(24) Any other materials, papers, forms, interviews, and documents as requested by the office shall be forwarded to the agent.

RUSSELL COLEMAN, Attorney General

APPROVED BY AGENCY: March 13, 2024

FILED WITH LRC: March 14, 2024 at 1:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2024, at 9:00 a.m. at the Office of Attorney General 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in attending 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 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, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Heather Wagers, Office of the Attorney General, Department of Criminal Investigations, 1024 Capital Center Drive, Frankfort, Kentucky 40601; phone 502-696-5320; fax 502-573-8319; email HeatherC.Wagers@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Wagers

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the uniform procedure and timeline for the Office of Attorney General, Department of Criminal Investigations to follow when conducting independent election inquiries, as well as the data and forms requested to complete said inquiries.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for independent election inquiries in accordance with KRS 15.243(3)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by identifying the process to be followed during an independent election inquiry.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the process and timeline of an independent election inquiry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are 120 elected county clerk offices within the Commonwealth that could be affected by the regulation if chosen at random to be the subject of an independent election inquiry pursuant to KRS 15.243. If a county is chosen at random to be a subject of said inquiry, then the local election officers, sheriff's office, and local board of election could all be subject to requests or interviews at the request of an Agent of the Office of Attorney General.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If a county is randomly drawn to take part in an independent election inquiry then the county clerk will be responsible for compliance with the requirements 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): No agencies will incur additional costs as a result of this administrative



regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will benefit by having an identified process and timeline for election inquiries.

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

(a) Initially: No increase in funding is anticipated.

(b) On a continuing basis: No increase in funding is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No increase in funding is anticipated.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is anticipated to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE

(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 affect the Office of the Attorney General and any randomly drawn county pursuant to KRS 15.243 who shall take part in an independent election inquiry.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.243.

(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 additional revenue for state or local governments.

(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 additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The Office of the Attorney General does not anticipate any significant additional costs.

(d) How much will it cost to administer this program for subsequent years? The Office of the Attorney General does not anticipate any significant additional costs.

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: The Office of the Attorney General does not anticipate any significant additional costs.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There are no anticipated cost savings for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no anticipated cost savings for regulated entities.

(c) How much will it cost the regulated entities for the first year? There are no anticipated cost increases to regulated entities over what

has normally been expended in previous years.

(d) How much will it cost the regulated entities for subsequent years? There are no anticipated costs increases to regulated entities over what has normally been expended in previous years. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: There are no anticipated costs increases to regulated entities over what has normally been expended in previous years.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] There is no major economic impact expected from implementation of this administrative regulation.

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(New Administrative Regulation)**

**301 KAR 5:210. Special agency fundraising permits.**

RELATES TO: KRS 150.170, 150.175

STATUTORY AUTHORITY: KRS 150.025, 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.175 authorizes the department to establish game permits to be used in combination with a statewide hunting license or valid youth statewide license, and how those permits are to be used. KRS 150.195(1) requires the department to promulgate administrative regulations pertaining to the issuance of, and other matters relating to, licenses and permits issued by the department. This administrative regulation establishes the requirements for the issuance and use of Special Agency Fundraising Permits.

Section 1. Definitions.

(1) "Elk hunt sweepstakes permit" means a permit, which allows the holder to harvest one (1) elk of either sex.

(2) "Immediate family" means a person's spouse, mother, father, daughter, brother, sister, grandparent, or son.

(3) "Premium combination big game permit" means a permit that allows the holder to lawfully take during the year of selection, one (1) elk of either sex and, in addition to the statewide harvest limits, the following species: one (1) deer of either sex, one (1) bear of either sex; and in the spring turkey season the year after selection, one (1) legal spring turkey.

(4) "Proceeds" means the amount of money received from the sale of applications for special agency fundraising permits.

(5) "Special Agency Fundraising Permit" means a Kentucky hunting permit subject to a special application and drawing process to select the holder, that includes privileges to take specified big game animals when used in conjunction with a statewide annual hunting license.

(6) "Standard combination big game permit" means a permit that allows the holder to lawfully take, in addition to the statewide harvest limits, the following species: one (1) deer of either sex, one (1) bear of either sex, and one (1) legal spring turkey.

Section 2. Application and Drawing Process.

(1) The application period shall be August 1 of the year preceding through May 30 (midnight eastern time) of the year in which the drawing occurs.

(2) An applicant shall:

(a) Complete the application process on the department's Web site at fw.ky.gov; and

(b) Pay the applicable nonrefundable application fee(s) for the permit(s) desired, as follows:

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1. For elk hunt sweepstakes permit and premium combination big game permits:

- a. Five (5) dollars for residents and ten (10) dollars for nonresidents for one (1) application;
- b. Ten (10) dollars for residents and twenty (20) dollars for nonresidents per bundle of three (3) applications; and
- c. Twenty-five (25) dollars for residents and fifty (50) dollars for nonresidents per bundle of ten (10) applications.

2. For standard combination big game permits:

- a. Three (3) dollars for residents and six (6) dollars for nonresidents for one (1) application;
- b. Eight (8) dollars for residents and sixteen (16) dollars for nonresidents per bundle of three (3) applications; and
- c. Twenty (20) dollars for residents and forty (40) dollars for nonresidents per bundle of ten (10) applications.

(3) An applicant may purchase an unlimited number of applications or bundles thereof.

(4) The number of special agency fundraising permits available per year shall be: one (1) elk sweepstakes permit (for a resident or nonresident holder); one (1) premium combination big game permit (for a resident or nonresident holder); one (1) standard combination big game permit for a resident; and one (1) standard combination big game permit for a nonresident.

(5) There shall be a random electronic drawing, conducted subsequent to the general elk hunt drawing each year, from among applications in each applicant pool for the corresponding special agency fundraising permits available for that fall's hunting seasons. Each drawing shall be sequential, with the elk hunt sweepstakes drawing conducted first, proceeded by the premium big game permit drawing second, and followed by the standard combination big game permit drawings for selection of resident and nonresident permit holders. If an individual applicant is selected for the elk hunt sweepstakes permit or the premium combination big game permit, upon selection that applicant shall be removed from the other special agency fundraising permits applicant pools prior to the drawings to determine the holders of those other permits.

(6) The commissioner shall extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(7) An applicant who is selected for a Kentucky elk hunt sweepstakes permit shall be ineligible to receive the elk hunt sweepstakes permit in a subsequent drawing.

(8) A person subject to a waiting period resulting from being selected in the general Kentucky Elk Hunt Drawing shall be eligible to apply for special agency fundraising permits.

### Section 3. Issuance and Use of Permits.

(1) Upon conclusion of the drawing process for special agency fundraising permits, the department shall announce the drawing results on the agency Web site and issue the permits to the recipients, subject to any applicable deferrals or transfers as described in Section 4 of this administrative regulation, prior to the first hunting season for which the permits are applicable.

(2) A permit holder shall only take animals with legal hunting equipment and during the normal season dates for which take is otherwise allowed.

(3) A permit holder shall carry proof of purchase of a valid Kentucky hunting license unless exempted from the requirement to be licensed by KRS 150.170.

(4) Holder of a permit that allows take of an elk shall comply with the statewide bag limit of one (1) elk per hunter per license year and other requirements in 301 KAR 2:132.

(5) The holder of a special agency fundraising permit that includes privileges to take elk may use the permit in any elk hunting unit open to hunting during any open elk hunting season on private land with permission from the landowner, or on department owned or managed lands that are the subject of public access agreements between the landowners and the department, but shall only use methods allowed during the season segment that is open as established in 301 KAR 2:132 while he or she is hunting.

### Section 4. Deferral or Transfer of Permits.

(1) A recipient of a special agency fundraising permit that includes privileges to take elk in Kentucky may:

(a) Defer use of the elk hunting privilege included in the permit for one (1) year if he or she has previously obtained an elk permit of any kind for use during the Kentucky elk hunting season to which the special agency fundraising permit pertains; or

(b) Transfer use of the elk hunting privilege included in the permit to one (1) member of his or her immediate family for use during the hunting season(s) to which the permit pertains.

(2) A holder wishing to transfer or defer use of the elk hunting privilege included in a permit shall contact the office of the commissioner in writing, no later than July 31 of the year in which he or she is selected through the drawing for the permit.

Section 5. Goods or Services May Be Included. The department may obtain goods or services of interest to prospective applicants, through purchase, donation or sponsorship, to incentivize applications for a special agency fundraising permit. The recipient of the permit shall also receive applicable goods or services included in the drawing for a permit, as posted on the agency Web site, except that a recipient may refuse an applicable good or service at his or her choosing.

Section 6. Use of Proceeds. Proceeds from the sale of special agency fundraising permits shall be deposited into the department's restricted Fish and Game Fund account and used solely for agency operational expenditures.

RICH STORM, Commissioner

APPROVED BY AGENCY: February 21, 2024

FILED WITH LRC: February 21, 2024 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 31, 2024, at 9:30 am., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation will establish a limited number of special agency fundraising permits to hunt big game species, which will generate agency revenues through collection of drawing application fees.

(b) The necessity of this administrative regulation: This regulation will enable the department to generate additional user fees to support agency programs without impacting the state's General Fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation will operate within the statutory authority of defining permits and fees for sustainable take of wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will allow limited, additional opportunities for residents and nonresidents to pursue big game, in support of the department's mission and with social, recreational and economic benefits to 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

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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: Individual holders of licenses and permits, and applicants to obtain limited quota permits, to hunt big game in Kentucky number 200,000-300,000 per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants may voluntarily submit applications for special agency fundraising permits from August 1 of the year preceding an applicable fall hunting season through May 30 of the hunt year. Recipients of permits awarded by random drawing will be required to follow applicable regulations such as seasons and methods for taking big game included in the permits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Prices for applying to receive one of the permits created by this regulation range from \$3.00 to \$50.00 based upon residency status, the type of permit being applied for, and the number of entries being purchased.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will have special opportunities to be selected at random to hunt big game in Kentucky and receive donated/sponsored goods and services.

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

(a) Initially: \$5,000 per year

(b) On a continuing basis: \$5,000 per year

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use agency revenues in the Fish and Game Fund to implement 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: The regulation will not increase existing fees, but new funding derived from sales of applications will more than offset implementation cost.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation will establish fees for voluntary applications for the drawing to award new special permits, as reflected in the regulation.

(9) TIERING: Is tiering applied? No, tiering is unnecessary because any individual may participate voluntarily.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources will be administering the special agency fundraising permit program and may contract with the Commonwealth Office of Technology or another third-party entity to conduct the special permit drawing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.175 authorizes the department to establish game permits to be used in combination with a statewide hunting license or valid youth statewide license, and how those permits are to be used. KRS 150.195(1) requires the department to promulgate administrative regulations pertaining to the issuance of and other matters relating to licenses and permits issued by the department.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the

first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department projects revenue to exceed \$100,000 for the first year that the special fundraising permits are available.

(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 Department anticipates that as public awareness grows and donations/sponsorships for products and services grow that revenue potential will increase significantly over time.

(c) How much will it cost to administer this program for the first year? Department staff time for software development, plus contracting costs to conduct the drawing, are anticipated to total less than \$5,000 in the first year.

(d) How much will it cost to administer this program for subsequent years? Department staff time for software maintenance, plus contracting costs to conduct the drawing, are anticipated to total less than \$5,000 in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Not applicable.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Not applicable.

(c) How much will it cost the regulated entities for the first year? Application fees for a single drawing entry will range from \$3 for residents and \$6 for nonresidents, to a bundle of 10 entries, at \$25 for residents and \$50 for nonresidents.

(d) How much will it cost the regulated entities for subsequent years? Fees are not projected to increase for the foreseeable future.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This regulation will not have a major economic impact on state or local government or individuals who may voluntarily participate in the special permit drawing program.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Fire Commission (New Administrative Regulation)

739 KAR 002:160. Reimbursement for line-of-duty stress injury treatment.

RELATES TO: KRS 42.190, 95A.200, 95A.210, 95A.220, 95A.240, 136.392, 335.500 - 335.599

STATUTORY AUTHORITY: KRS 95A.220, 95A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.220 establishes the Firefighters Foundation Program fund and appropriates the monies in the fund for the purposes provided in KRS 95A.200 to 95A.300. KRS 95A.240 requires the Kentucky Fire Commission to administer the Firefighters Foundation Program fund

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and authorizes the Commission to issue such reasonable rules and regulations as will facilitate the administration of the fund and further the purposes of KRS 95A.200 to 95A.300. KRS 95A.220(5) requires the Kentucky Fire Commission to reimburse a qualifying firefighter for his or her out-of-pocket expenses for treatment of a qualifying stress injury. This administrative regulation establishes requirements for obtaining stress injury reimbursement benefits.

### Section 1. Definitions.

(1) "Full-time career firefighter" means any member of a paid municipal fire department organized under KRS Chapter 95, 67A, or 67C, any member of a fire protection district organized under KRS Chapter 75, any member of a county fire department created pursuant to KRS Chapter 67, or any firefighter employed by an air board created under KRS Chapter 183.

(2) "Fund" is defined by KRS 95A.210(4).

(3) "Mental health professional" means a psychiatrist, psychologist, or professional counselor credentialed under KRS 335.500 to 335.599.

(4) "Qualifying firefighter" means an individual who satisfies the requirements of section 3 of this administrative regulation.

(5) "Stress injury" is defined by KRS 95A.220(1).

(6) "Volunteer firefighter" means any member of a fire department organized under KRS Chapter 273.

### Section 2. Funding.

(1) For each fiscal year, \$1,250,000 shall be made available from the fund for a program to reimburse current and former full-time career firefighters and volunteer firefighters for their out-of-pocket expenses for treatment of stress injuries caused by an event or an accumulation of events occurring in the course and scope of their employment.

(2) Upon exhaustion or termination of funding, reimbursement benefits pursuant to this administrative regulation shall cease.

Section 3. Eligibility. An individual shall be eligible to receive reimbursement pursuant to Section 4 of this administrative regulation if:

(1) The individual is currently a full-time career firefighter or volunteer firefighter or was formerly a full-time career firefighter or volunteer firefighter;

(2) The individual has been diagnosed with a stress injury by a mental health professional;

(3) The stress injury has been caused by an event or an accumulation of events that have occurred in the course and scope of the individual's employment as a full-time career firefighter or volunteer firefighter; and

(4) The individual submits to the commission a completed:

(a) Stress Injury Reimbursement Application form;

(b) Substitute W-9 form; and

(c) Certification of Stress Injury Diagnosis form.

### Section 4. Reimbursement.

(1) After receiving treatment for a stress injury, a qualifying firefighter may submit to the commission corresponding receipts for the out-of-pocket expenses for such treatment for reimbursement from the funds allocated for stress injury reimbursement pursuant to Section 1 of this administrative regulation. Reimbursable out-of-pocket expenses for stress injury treatment include expenses paid by a qualifying firefighter for:

(a) Initial diagnosis;

(b) Counseling or therapy;

(c) Medication;

(d) Mental health facility expenses;

(e) In-patient treatment; or

(f) Out-patient treatment.

(2) A qualifying firefighter shall pay any out-of-pocket expenses for stress injury treatment before submitting receipts for reimbursement.

(3) After a qualifying firefighter has paid any out-of-pocket expenses for which reimbursement is sought, a qualifying firefighter seeking reimbursement shall submit to the commission:

(a) All insurance payment receipts for treatment of the stress

injury;

(b) A completed Stress Injury Voucher; and

(c) All receipts for out-of-pocket expenses for treatment of the stress injury which have been paid by the qualifying firefighter and for which reimbursement is sought.

Section 5. Limitations on Reimbursement Benefits. Reimbursement benefits for each qualifying firefighter shall not exceed \$50,000 unless:

(1) A written request for additional benefits is submitted to the commission by the qualifying firefighter, which shall include the dollar amount of the additional reimbursement benefits requested; and

(2) The financial department of the commission determines that the requested additional reimbursement benefits are available pursuant to Section 1 of this administrative regulation.

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

(a) "Certification of Stress Injury Diagnosis" form;

(b) "Stress Injury Reimbursement Application" form;

(c) "Stress Injury Voucher"; and

(d) "Substitute W-9" form.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Fire Commission office, 110 Cleveland Drive, Paris, Kentucky 40361, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at: <http://kyfires.acadisonline.com/>.

RICKY KING, Chair

APPROVED BY AGENCY: February 23, 2024

FILED WITH LRC: March 11, 2024 at 1:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2024 at 1:00 p.m. ET at the Kentucky Fire Commission, 110 Cleveland Drive, Paris, Kentucky 40361. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John K. Wood, counsel for the Kentucky Fire Commission, 163 East Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, email [administrativeregulations@wgmfirm.com](mailto:administrativeregulations@wgmfirm.com).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John K. Wood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for applying for and obtaining stress injury reimbursement benefits from the Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures and requirements for applying for and obtaining stress injury reimbursement benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 95A.220 establishes the Firefighters Foundation Program fund and appropriates the monies in the fund for the purposes provided in KRS 95A.200 to 95A.300. KRS 95A.240 requires the Kentucky Fire Commission to administer the Firefighters Foundation Program fund and authorizes the Commission to issue such reasonable rules and regulations as will facilitate the

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administration of the fund and further the purposes of KRS 95A.200 to 95A.300. KRS 95A.220(5) requires the Kentucky Fire Commission to reimburse a qualifying firefighter for his or her out-of-pocket expenses for treatment of a qualifying stress injury. This administrative regulation conforms to the content of KRS 95A.220 and 95A.240 by establishing reasonable rules and regulations regarding stress injury reimbursement benefits, which will facilitate the administration of the Firefighter Foundation Program fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 95A.220 establishes the Firefighters Foundation Program fund and appropriates the monies in the fund for the purposes provided in KRS 95A.200 to 95A.300. KRS 95A.240 requires the Kentucky Fire Commission to administer the Firefighters Foundation Program fund and authorizes the Commission to issue such reasonable rules and regulations as will facilitate the administration of the fund and further the purposes of KRS 95A.200 to 95A.300. KRS 95A.220(5) requires the Kentucky Fire Commission to reimburse a qualifying firefighter for his or her out-of-pocket expenses for treatment of a qualifying stress injury. This administrative regulation will assist in the effective administration of KRS 95A.220 and 95A.240 by establishing reasonable rules and regulations regarding stress injury reimbursement benefits, which will facilitate the administration of the Firefighter Foundation Program fund.

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

(a) How the amendment will change this existing administrative regulation: Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect any current and former Kentucky firefighters diagnosed with a stress injury that was caused by an event or an accumulation of events that occurred during the course and scope of the firefighter's employment.

(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: Once diagnosed, an eligible firefighter may submit a Certification of Stress Injury Diagnosis to the Commission, which is to be completed by the firefighter's diagnosing psychiatrist, psychologist, or professional counselor credentialed under KRS 335.500 to 335.599. The eligible firefighter may then submit to the Commission a Stress Injury Voucher and receipts for his or her out-of-pocket expenses for treatment of the stress injury. The Commission will reimburse the firefighter for those out-of-pocket expenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Eligible firefighters will benefit from the Commission reimbursing their out-of-pocket expenses for stress injury treatment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Other than administrative costs, there will be no cost in implementing this administrative regulation.

(a) Initially: There will be no cost to any entity identified in question (3).

(b) On a continuing basis: There will be no cost to any entity identified in question (3).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Firefighters Foundation Program 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 necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because it establishes requirements applicable to all eligible firefighters.

### FISCAL NOTE

(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 administrative regulation will not directly impact any state or local government. However, this administrative regulation will impact eligible firefighters in fire departments across the Commonwealth.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 95A.220 establishes the Firefighters Foundation Program fund and appropriates the monies in the fund for the purposes provided in KRS 95A.200 to 95A.300. KRS 95A.240 requires the Kentucky Fire Commission to administer the Firefighters Foundation Program fund and authorizes the Commission to issue such reasonable rules and regulations as will facilitate the administration of the fund and further the purposes of KRS 95A.200 to 95A.300. KRS 95A.220(5) requires the Kentucky Fire Commission to reimburse a qualifying firefighter for his or her out-of-pocket expenses for treatment of a qualifying stress injury. This administrative regulation is authorized by KRS 95A.220 and 95A.240 because it establishes reasonable rules and regulations regarding stress injury reimbursement benefits, which will facilitate the administration of the Firefighter Foundation Program fund.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? For each fiscal year, this administrative regulation makes available \$1,250,000 from the Firefighters Foundation Program fund to be used for stress injury reimbursements.

(d) How much will it cost to administer this program for subsequent years? For each fiscal year, this administrative regulation makes available \$1,250,000 from the Firefighters Foundation Program fund to be used for stress injury reimbursements.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): For each fiscal year, this administrative regulation makes available \$1,250,000 from the Firefighters Foundation Program fund to be used for stress injury reimbursements.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate any cost savings for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any cost savings for regulated entities.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not impose any costs on regulated entities.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not impose any costs on regulated entities.

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

Cost Savings (+/-): This administrative regulation will not generate any cost savings for regulated entities.

Expenditures (+/-): This administrative regulation will not impose any costs on regulated entities.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. This administrative regulation provides for \$1,250,000 to be made available from the Firefighters Foundation Program fund for stress injury reimbursements and it will therefore have a major economic impact.

**ENERGY AND ENVIRONMENT CABINET  
Public Service Commission  
(New Administrative Regulation)**

**807 KAR 5:078. Alternative rate adjustment for electric cooperatives.**

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the Public Service Commission may promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.030(1) provides that all rates received by an electric utility subject to the jurisdiction of the Public Service Commission shall be fair, just, and reasonable. KRS 278.030(2) provides that every utility shall furnish adequate, efficient, and reasonable service. This administrative regulation establishes a simplified and less expensive procedure for rural electric cooperatives to use to apply to the commission for rate adjustments.

Section 1. Definitions.

(1) "Annual report" means the financial and statistical report incorporated by reference in 807 KAR 5:006, which requires a utility to file the annual report with the commission.

(2) "Attorney General" means the Attorney General, Office of Rate Intervention.

(3) "General rate adjustment" means an adjustment in rates received pursuant to an application filed pursuant to 807 KAR 5:001, Section 16.

(4) "Base rate adjustment" mean a general rate adjustment or an adjustment in rates received pursuant to an application filed pursuant to Section 2 of this administrative regulation.

(5) "Cooperative" means any rural electric cooperative corporation formed under KRS Chapter 279 that distributes electricity.

(6) "OTIER" means the operating times interest earned ratio for the cooperative.

(7) "Rate" is defined by KRS 278.010(12).

(8) "TIER" means the times interest earned ratio for the cooperative.

Section 2. Increase in Rates. Cooperatives Permitted to File Application. A cooperative may apply for an adjustment of rates using the procedure established in this administrative regulation if:

(1) No more than ten (10) years has elapsed since the effective date of new rates resulting from a cooperative's most recent base rate adjustment;

(2) At least twelve (12) months have elapsed since the effective date of the cooperative's most recent base rate adjustment;

(3) The cooperative requests a rate increase not exceeding one (1) percent per twelve (12) month period since its last base rate adjustment;

(4) The cooperative requests an increase that does not exceed 1.85 OTIER;

(5) If aggregating multiple twelve (12) month periods in the application, the overall cumulative rate increase does not exceed five (5) percent;

(6) The cooperative's most recent embedded class cost of service study was completed within the five (5) years prior to the submission of the cooperative's application under this section;

(7) The cooperative's application includes only request for:

(a) Adjustments in revenue requirements;

(b) Changes to rate design; and

(c) Changes to the cooperative's tariff necessary to reflect changes in rates;

(8) The proposed rate increase is based upon a historical test year that corresponds with the most recent annual report filed with the commission;

(9) The cooperative's application is filed electronically pursuant to the requirements of 807 KAR 5:001, Section 8;

(10) The cooperative has notified the commission in writing of its intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application; and

(11) Upon filing the notice of intent with the commission, the cooperative mailed to the Attorney General a copy of the notice of intent or sent by electronic mail in a portable document format, to [rateintervention@ag.ky.gov](mailto:rateintervention@ag.ky.gov).

Section 3. An application filed pursuant to this Section 2 of this administrative regulation shall include:

(1) A narrative statement discussing any changes materially affecting the cooperative's rates or service that have occurred since the effective date of its last base rate adjustment and stating the reasons for the proposed adjustment;

(2) If more than five (5) years has elapsed since the cooperative's most recent general rate adjustment, a detailed explanation of why the cooperative did not seek a general rate adjustment in that period;

(3) New or revised tariff sheets, if applicable, in a format that complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

(4) New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

(a) The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

(b) A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

(c) A statement that notice has been given in compliance with Section 7 of this administrative regulation with a copy of the notice;

(5) A general statement identifying any electric property or plant held for future use;

(6) All current agreements related to vegetation management, as well as a statement identifying any changes that occurred since the cooperative's base rate adjustment to the cooperative's policies on vegetation management, indicating the effective date and reason for these changes;

(7) A statement identifying any changes that occurred during the test year to the cooperative's written policies on the compensation of its attorneys, auditors, and all other professional service providers, indicating the effective date and reason for these changes;

(8) A statement explaining whether the depreciation rates reflected in the application are identical to those most recently approved by the commission.

(a) If the depreciation rates are identical, the application shall identify the case in which they were approved.

(b) If the depreciation rates are different, the application shall include a depreciation study that supports the rates reflected in the application;

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(9) The estimated dates for drawdowns of unadvanced loan funds at test year end and the proposed uses of these funds;

(10) A schedule of the cooperative's standard directors' fees, per diems, and any other compensation in effect during the test year. The schedule shall:

(a) Include a description of any changes that occurred during the test year to the cooperative's written policies specifying the compensation of directors; and

(b) Indicate the effective date and explanation for any change;

(11) A schedule reflecting the salaries and other compensation of each executive officer for the test year and two (2) preceding calendar years. The schedule shall include:

(a) The percentage of annual increase and the effective date of each salary increase;

(b) The job title, duty and responsibility of each officer;

(c) The number of employees who report to each executive officer;

(d) To whom each executive officer reports; and

(e) For employees elected to executive officer status during the test year, the salaries for the test year for those persons whom they replaced;

(12) The cooperative's TIER, OTIER, and debt service coverage ratio, as calculated by the Rural Utility Service, for the test year and the five (5) most recent calendar years, including the data used to calculate each ratio;

(13) The cooperative's debt instruments;

(14) A copy of all exhibits and schedules that were prepared for the rate application in Excel spreadsheet format with all formulas intact and unprotected and with all columns and rows accessible;

(15) A schedule comparing balances for each balance sheet account or subaccount included in the cooperative's chart of accounts for each month of the test year to the corresponding month of the twelve (12)-month period immediately preceding the test year;

(16) A schedule comparing each income statement account or subaccount included in the cooperative's chart of accounts for each month of the test year to the same month of the twelve (12)-month period immediately preceding the test year. The amounts shall reflect the income or expense activity of each month, and not the cumulative balances at the end of the particular month;

(17) A schedule showing anticipated and incurred rate case expenses, with supporting documentation which shall be updated every thirty (30) days during the proceeding.

(18) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease; and

(19) A statement of the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(20) A summary of the cooperative's determination of its revenue requirements based on return on TIER, OTIER, debt service coverage and any metric required by the cooperative's current debt instruments, with supporting schedules;

(21) If the cooperative had amounts charged or allocated to it by an affiliate or general or home office or paid monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the cooperative shall file:

(a) A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;

(b) An explanation of how the allocator for the test period was determined; and

(c) All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;

(22) A calculation of the normalized depreciation expense (test-year end plant account balance multiplied by depreciation rate);

(23) An analysis of FERC Account No. 930, Miscellaneous General Expenses, for the test year. The analysis shall include:

(a) A complete breakdown of this account by the following categories:

1. Industry association dues;
2. Debt-serving expenses;
3. Institutional and conservation advertising;

4. Rate department load studies;

5. Director's fees and expenses;

6. Dues and subscriptions; and

7. Miscellaneous;

(b) Detailed supporting workpapers which shall include for amounts over \$100, the date, vendor, reference, dollar amount, and a brief description of each expenditure.

(24) An analysis of FERC Account No. 426, Other Income Deductions, for the test period. The analysis shall include:

(a) A breakdown of this account by the following categories:

1. Donations;

2. Civic activities;

3. Political activities; and

4. Other;

(b) Detailed supporting workpapers which shall include for amounts over \$1,000, the date, vendor, reference, dollar amount, and a brief description of each expenditure;

(25) A trial balance as of the last day of the test year showing account number, subaccount number, account title, subaccount title, and amount. The trial balance shall include:

(a) All asset, liability, capital, income, and expense accounts used by the cooperative; and

(b) All income statements accounts should show activity for twelve (12) months that shows the balance in each control account and all underlying subaccounts per the company books;

(26) A schedule showing employee health, dental, vision, and life insurance premium contributions by coverage type, including the cost split of each identified premium between the employee and the cooperative;

(27) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments; and

(28) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

Section 4. Revenue Neutral Application: Cooperatives Permitted to File Application. A cooperative may apply for a revenue neutral adjustment of rates using the procedure established in this section if:

(1) It has been at least twelve (12) months since the effective date of the cooperative's last base rate adjustment;

(2) The change in rates does not result in an increase in the revenue requirement used to determine the rates in the cooperative's most recent base rate adjustment case;

(3) The cooperative's application includes only requests for:

(a) Adjustments in revenue allocations;

(b) Changes to rate design; and

(c) Changes to the cooperative's tariff necessary to reflect changes in rates;

(4) The cooperative's most recent embedded class cost of service study was completed within the five (5) years prior to the submission of the cooperative's application under this section;

(5) The cooperative's application is filed electronically pursuant to the requirements of 807 KAR 5:001, Section 8;

(6) A cooperative has notified the commission in writing of its intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application; and

(7) Upon filing the notice of intent with the commission, the applicant has mailed to the Attorney General Intervention a copy of the notice of intent or sent by electronic mail in a portable document format, to [rateintervention@ag.ky.gov](mailto:rateintervention@ag.ky.gov).

Section 5. An application filed pursuant to Section 4 of this administrative regulation shall include:

(1) A narrative statement discussing any changes that have occurred for the cooperative since the effective date of its last change in rate design or revenue allocation and stating the reasons for the proposed adjustment;

(2) If more than five (5) years has elapsed since cooperative's most recent general rate adjustment, a detailed explanation of why the cooperative has not sought a general rate adjustment;

(3) New or revised tariff sheets, if applicable, in a format that

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complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

(4) New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

(a) The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

(b) A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

(c) A statement that notice has been given in compliance with Section 7 of this administrative regulation with a copy of the notice.

(5) A general statement identifying any electric property or plant held for future use;

(6) All current agreements related to vegetation management, as well as a statement identifying any changes that occurred since the cooperative's most recent base rate adjustment to the cooperatives policies on vegetation management, indicating the effective date and reason for these changes;

(7) A statement identifying any changes that occurred during the test year to the cooperative's written policies on the compensation of its attorneys, auditors, and all other professional service providers, indicating the effective date and reason for these changes;

Section 6. Exclusions for Ratemaking Purposes. The following are excluded for ratemaking purposes and shall be excluded from the pro forma test year income statement and supporting documentation included in an application made pursuant to Section 2 of this administrative regulation.

(1) The contribution made for the least generous plans for employer retirement contributions for employees participating in multiple benefit packages;

(2) If employee health care insurance premium contribution is zero, for ratemaking purposes the pro forma income statement shall reflect healthcare insurance premiums adjusted for employee contributions based on the national average for coverage type;

(3) Life insurance premiums for coverage above an employee's annual salary or \$50,000, whichever is less;

(4) Advertising expenses prohibited from rate recovery by 807 KAR 5:016;

(5) All fuel adjustment clause and environmental surcharge revenues and expenses;

(6) Charitable and political contribution both in cash and services;

(7) Salary and all company-paid or reimbursed expenses or allowances for lobbying on the local, state, or national level. If any amounts are allocated, show a calculation of the factor used to allocate each amount;

(8) Any non-regulated activities;

(9) All non-utility property and related property taxes; and

(10) For board of directors:

(a) Per diems for attending industry association meetings;

(b) Costs of health insurance coverage;

(c) Costs of post-retirement benefits;

(d) Costs of gifts;

(e) Cost of insurance for spouses or dependents of deceased directors; and

(f) Any costs for a director's spouse.

Section 7. Notice. Upon filing an application pursuant to this administrative regulation, a cooperative shall provide notice as established in this section.

(1) Public postings.

(a) A cooperative shall post at its place of business a copy of the notice required by 807 KAR 5:001, Section 17, no later than the date the application is submitted to the commission.

(b) Within five (5) business days of the date the application is submitted to the commission, the cooperative shall conspicuously post on its Web sites and social media accounts:

1. A copy of the public notice; and

2. A hyperlink to the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this

subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer notice. A cooperative shall provide public notice by:

(a) Including the notice with customer bills mailed no later than the date on which the application is submitted to the commission;

(b) Mailing a written notice to each customer no later than the date on which the application is submitted to the commission;

(c) Publishing the notice in a newspaper of general circulation, with the first publication being no later than the date on which the application is submitted to the commission, for three (3) consecutive weeks inclusive of the first publication; or

(d) Publishing the notice in a trade publication or newsletter received by all cooperative members, delivered no later than the date on which the application is submitted to the commission.

(3) Proof of notice. A cooperative shall file with the commission no later than thirty (30) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the cooperative verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in the cooperative's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the cooperative verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice content.

(a) The notice required by subsection (1) of this section shall include the notice contents required by 807 KAR 5:001, Section 17(4) except for the statement required by 807 KRS 5:001, Section 17(4)(j).

(b) The customer notice required by subsection (2) of this section shall include:

1. The case number for the proceeding;

2. The proposed effective date and the date the proposed rates are expected to be filed with the commission;

3. The present rates and proposed rates for each customer classification to which the proposed rates will apply;

4. The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

5. The cooperative's business address where a copy of the notice required by subsection (1) of this section may be viewed;

6. A link to Web site notifications where a copy of the notice required by subsection (1) of this section may be viewed;

7. Links or references to social media posts where a copy of the notice required by subsection (1) of this section (or link thereto) may be viewed;

8. A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, or emailed to [PSCED@ky.gov](mailto:PSCED@ky.gov), establishing the grounds for the request including the status and interest of the party;

9. A statement that the commission is required to take action within seventy-five (75) days of the date the application is accepted for filing;

10. A summary of proposed changes to lighting and other miscellaneous rates.

(c) Customer notice required by subsection (2) of this section may omit from the notice any rates under which no customers are receiving service at the time the application is submitted to the commission.

Section 8. Procedure.

(1) Upon submission of the application, the commission shall issue an order that:

(a) Grants the Attorney General intervention and:

(b) Allows seven (7) days for the Attorney General to file its



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statement as required by 807 KAR 5:001, Section 8(9)(b) or notify the commission in writing that the Attorney General will not participate in the proceeding, and

(c) Allows seven (7) days to file comments regarding the cooperative's application and whether it should be accepted for filing pursuant to this regulation or treated as an application file pursuant to 807 KAR 5:001, Section 16.

(2) Within ten (10) business days of the filing of the application, the commission shall complete its initial review of the application and issue an order either accepting or rejecting the application for filing under this administrative regulation.

(3) The commission may only reject an application submitted pursuant to this administrative regulation based on a finding that the application does not comply with the relevant administrative regulations and statutes.

(4) The commission may only reject an application filed pursuant to this administrative regulation based on a finding that the proposed rates will not provide the cooperative sufficient revenue to provide the service required by KRS 278.030(2).

(5) If the commission rejects the application for processing under this administrative regulation, the application will be deemed submitted pursuant to KRS 278.190 and 807 KAR 5:001, Section 16.

(6) An order rejecting the application for the processing under this administrative regulation shall, at minimum, include:

(a) Findings explaining the reason the application was not accepted under this administrative regulation;

(b) An opportunity for the cooperative to amend its application if it wants to proceed for a general rate adjustment pursuant to KRS 278.190 and 807 KAR 5:001, Section 16;

(c) A schedule for the processing of the application, including a deadline by which the cooperative may amend its application; and

(d) A list of any additional evidence that the cooperative should provide in an amended application.

(7) If the commission rejects the cooperative's application for processing under this administrative regulation the cooperative may, with written notice to the commission, withdraw its application.

(8) An order accepting the cooperative's application for processing under this regulation shall incorporate into the record the two (2) most recent annual reports of the cooperative on file with the commission.

(9) An order accepting the cooperative's application for processing under this regulation shall establish a procedural schedule that includes deadlines for:

(a) Filing of one written set of requests for intervention by parties and commission staff;

(b) Parties' submission of written comments upon the conclusion of the filing of evidence; and

(c) The submission of the case to the commission for a final decision.

(10) Commission staff may propound written requests for information at any time.

(11) The commission shall notify the cooperative of any deficiencies in the application within fourteen (14) days of the application's submission. An application shall not be accepted for filing until the cooperative has cured all noted deficiencies.

(12) The commission shall issue a final order within seventy-five (75) days after an application is filed with the commission, unless it is necessary for good cause to continue the application for longer time than seventy-five (75) days, in which case the order making the continuance shall state fully the facts that make it necessary. Any continuance shall not exceed fourteen (14) days.

**Section 9. Communication with Parties.**

(1) The cooperative may state in its application that members of commission staff may contact the cooperative's witnesses directly, without counsel present, to seek clarification of certain factual information contained in the application or in responses to requests for information.

(2) Following a communication as provided for in subsection 5(a) of this section, commission staff shall file in the record a memorandum detailing the content and subject of the communication.

(3) In cases where there are intervenors, commission staff shall not have direct communication with the cooperative's witnesses unless the intervenor participates or has waived participation.

**Section 10. Deviations from Rules.** In special cases, for good cause shown, the commission may permit deviations from these rules.

This is to certify that the Public Service Commission approved promulgation of this administrative regulation pursuant to KRS 278.040(3), on March 14, 2024.

LINDA C. BRIDWELL, PE, Executive Director  
KENT A. CHANDLER, Chairman

APPROVED BY AGENCY: March 14, 2024

FILED WITH LRC: March 14, 2024 at 2:15 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on May 21, 2024, at 10:00 a.m. eastern daylight time at the Kentucky Public Service Commission, 211 Sower Boulevard, 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 and instructions on how to attend and participate virtually will be published on the commission's website at psc.ky.gov. 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, 2024. Written notification of intent to be heard at the public hearing and written comments on the proposed amendment should be sent or delivered to the contact person listed below.

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

**Regulatory Impact Analysis and Tiering Statement**

Contact Person: John E.B. Pinney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation provides for an alternative ratemaking process for rural electric cooperatives.

(b) The necessity of this administrative regulation: This administrative regulation is needed to reduce the costs to electric cooperatives of rate increase applications and to encourage electric cooperatives to seek more frequent and incremental rate adjustments. The regulation establishes the requirements of when and how an electric cooperative may avail itself of the alternate procedure, provides for commission review of the application, establishes the procedure to be followed, establishes the contents of an application, establishes notice requirements, and establishes a time which the commission must issue an order on the application. This new regulation places into regulation, a pilot program the commission implemented in 2019 and under which several electric cooperatives have sought rate increases.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) states that the PSC has exclusive jurisdiction over the regulation of rates and services of utilities. KRS 278.030(1) provides that all rates received by a utility shall be fair, just, and reasonable. KRS 278.030(2) provides that every utility shall furnish adequate, efficient, and reasonable service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the rules of procedure that utilities and the commission must follow.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulation will affect the nineteen (19) rural electric distribution cooperatives subject to the commission's jurisdiction.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions. This new regulation places into regulation, a pilot program the commission implemented in 2019 and under which several electric cooperatives have sought rate increases.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Zero Dollars; no fiscal impact. The commission anticipates that it will lead to reduced costs to the electric distribution cooperatives. Cooperatives that have filed rate applications under the pilot program at the commission have reported decreased rate case expenses compared to applications file pursuant to traditional methods.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Electric cooperatives will reduce the costs of applications for rate increases, will have regulatory certainty of when and for how much it may seek a rate increase, and cooperatives will be ensured a decision on their rate applications in a shorter time than what is provided for in KRS 278.190.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? No. The regulation applies only to rural electric cooperative corporation and applies equally to each rural electric cooperative corporation regardless of number of customers, size of assets, level of revenues, or any other size variable. Likewise, there are no nonsize variables applied.

FISCAL NOTE

(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? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040

(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. To the extent that a state or local government agency is a customer of an electric cooperative they may experience smaller than average rate increases for electric service due to the anticipated costs saved by the

alternative rate procedure.

(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? Zero dollars; no additional 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? Zero dollars; no additional revenue.

(c) How much will it cost to administer this program for the first year? Zero dollars.

(d) How much will it cost to administer this program for subsequent years? Zero dollars.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The savings may not be on an annual basis, an electric cooperative will realize the savings when it files a rate case application.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Based upon experience with the pilot program at the commission, an electric cooperative can expect to save, on average, \$70,000 in rate case expenses under this regulation compared to expenses for a rate application filed under the normal procedure. The reduction in expenses results in less expenses passed on to customers through rates.

(c) How much will it cost the regulated entities for the first year? Zero dollars.

(d) How much will it cost the regulated entities for subsequent years? Zero dollars

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. No major economic impact.

CABINET FOR HEALTH AND FAMILY SERVICES  
Office of the Secretary  
(New Administrative Regulation)

915 KAR 2:001. Definitions for 915 KAR Chapter 2.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations to administer the medicinal cannabis program in the commonwealth. This administrative regulation establishes definitions of terms used by the cabinet in administrative regulations pertaining to qualified patients, visiting qualified patients, designated caregivers, and the medicinal cannabis program.

Section 1. Definitions.

(1) "Bona fide practitioner-patient relationship" is defined by KRS 218B.010(1).

(2) "Cabinet" means the Cabinet for Health and Family Services.

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- (3) "Cardholder" is defined by KRS 218B.010(5).
- (4) "Certificate of analysis" means a document that confirms that the test performed by a safety compliance facility on a harvest batch or production batch meets the testing requirements set forth by the cabinet.
- (5) "Cultivator" is defined by KRS 218B.010(6).
- (6) "Designated caregiver" is defined by KRS 218B.010(8).
- (7) "Dispensary" is defined by KRS 218B.010(9).
- (8) "Disqualifying felony offense" is defined by KRS 218B.010(11).
- (9) "Medicinal cannabis" is defined by KRS 218B.010(15).
- (10) "Medicinal cannabis practitioner" is defined by KRS 218B.010(17).
- (11) "Medicinal cannabis product" is defined by KRS 218B.010(18).
- (12) "Minor" is defined by KRS 218B.010(19).
- (13) "Out-of-state registry identification card" is defined by KRS 218B.010(20).
- (14) "Producer" is defined by KRS 218B.010(23).
- (15) "Qualified patient" is defined by KRS 218B.010(25).
- (16) "Qualifying medical condition" is defined by KRS 218B.010(26).
- (17) "Registered qualified patient" is defined by KRS 218B.010(28).
- (18) "Registry identification card" is defined by KRS 218B.010(29).
- (19) "Safety compliance facility" is defined by KRS 218B.010(30).
- (20) "Serious violation" is defined by KRS 218B.010(33).
- (21) "State licensing board" is defined by KRS 218B.010(35).
- (22) "Telehealth" is defined by KRS 218B.010(36).
- (23) "Visiting qualified patient" is defined by KRS 218B.010(38).
- (24) "Written certification" is defined by KRS 218B.010(39).

SAM FLYNN, Executive Director  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 6, 2024

FILED WITH LRC: March 14, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 15, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Oran S. McFarlan, III or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions of terms used by the Cabinet for Health and Family Services in administrative regulations pertaining to patients, designated caregivers, medicinal cannabis practitioners, and the medicinal cannabis program.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations for the medicinal cannabis program. This administrative regulation sets out definitions of terms used in administrative regulations pertaining to patients, designated caregivers, medicinal cannabis practitioners, and the medicinal cannabis program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the definitions of terms used in administrative regulations pertaining to patients, designated caregivers, medicinal cannabis practitioners, and the medicinal cannabis 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: Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects patients, designated caregivers, medicinal cannabis practitioners, and the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable.

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

(a) Initially: This administrative regulation establishes definitions for terms used by the cabinet in administrative regulations pertaining to patients, designated caregivers, medicinal cannabis practitioners, and the medicinal cannabis program. There is no anticipated cost to implement this administrative regulation.

(b) On a continuing basis: This administrative regulation establishes definitions for terms used by the cabinet in administrative regulations pertaining to patients, designated caregivers, medicinal cannabis practitioners, and the medicinal cannabis program. There is no anticipated cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All patients, designated caregivers, and medicinal cannabis practitioners will be treated equally.

FISCAL NOTE

(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 Medical Cannabis Program within 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 218B.140.

(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 not expected to generate revenue for state or local government 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 is not expected to generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation establishes definitions for terms used by the cabinet in administrative regulations pertaining to patients, designated caregivers, medicinal cannabis practitioners, and the medicinal cannabis program. There is no anticipated cost to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation establishes definitions for terms used by the cabinet in administrative regulations pertaining to patients, designated caregivers, medicinal cannabis practitioners, and the medicinal cannabis program. There is no anticipated cost to implement this administrative regulation on a continuing basis.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The cabinet does not anticipate any cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? The cabinet does not anticipate any cost for patients, designated caregivers, or medicinal cannabis practitioners arising out of this administrative regulation in the first year.

(d) How much will it cost the regulated entities for subsequent years? The cabinet does not anticipate any cost for patients, designated caregivers, or medicinal cannabis practitioners arising out of this administrative regulation in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] It is not anticipated that this administrative regulation will have an overall negative or adverse economic impact of \$500,000 or more on the Cabinet for Health and Family Services.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office of the Secretary  
(New Administrative Regulation)**

**915 KAR 2:010. Procedures for registry identification cards.**

RELATES TO: KRS Chapter 218B, Chapter 387, Chapter 13B  
STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing procedures for the issuance, renewal, suspension, and revocation of registry identification cards, including the creation of an application form. This administrative regulation establishes those procedures.

**Section 1. Patient and Caregiver Registry.**

(1) Except for persons who possess valid out-of-state registry identification cards and documentation of having been diagnosed with a qualifying medical condition as defined by KRS 218B.010(26), no person shall possess, purchase, acquire, or otherwise engage in the use of medicinal cannabis in Kentucky without first applying for and receiving a registry identification card issued by the cabinet.

(2) The eligibility requirements for qualified patients, designated caregivers, and visiting qualified patients to receive a registry identification card from the cabinet are contained in KRS 218B.055, including not being convicted of a disqualifying felony offense. The qualifications that a patient or caregiver shall meet to receive a registry identification card are continuing qualifications.

(3) The cabinet shall maintain a patient and caregiver registry for the Kentucky Medical Cannabis Program as part of the state's designated electronic monitoring system. To receive a registry identification card, qualified patients, visiting qualified patients, and designated caregivers shall complete an application in accordance with written instructions provided by the cabinet.

(4) The cabinet shall adhere to the confidentiality requirements for cardholders and information provided by qualified patients, visiting qualified patients, and designated caregivers contained in KRS 218B.135.

(5) Except as provided in KRS 218B.060(3)(b), the expiration date for registry identification cards shall be one (1) year after the date of issuance. A registry identification card shall not be valid beyond the expiration date.

**Section 2. Application for a Registry Identification Card.**

(1) An applicant shall only use the applicable registry identification card application form prescribed by the cabinet and made available through the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(2) An applicant shall submit a registry identification card application to the cabinet in the manner prescribed by the application instructions.

(3) Pursuant to KRS 218B.055(6), a registry identification card application submitted by or on behalf of qualified patients shall include:

(a) The full name, address, telephone number, email address, date of birth, Social Security number, and driver's license number of the qualified patient, except that if the applicant is homeless an address where the applicant may be reached shall be provided to the cabinet;

(b) A written certification issued to the qualified patient by a medicinal cannabis practitioner;

(c) The name, address, and telephone number of the qualified patient's medicinal cannabis practitioner;

(d) The full name, address, telephone number, email address, and date of birth of not more than two (2) individuals chosen by the qualified patient to be designated as a caregiver if the qualified patient chooses to designate a caregiver, except that if an individual has been appointed as a guardian, limited guardian, conservator, or limited conservator under KRS Chapter 387, the qualified patient

shall choose that individual as a designated caregiver;

(e) The application fee for a qualified patient;

(f) A question asking whether the qualified patient wants to receive notifications from the cabinet of any clinical studies needing human subjects for research on the use of medicinal cannabis in accordance with KRS 218B.055(9);

(g) An attestation that:

1. The qualified patient authorizes the cabinet to share cardholder information with licensed dispensaries for the purpose of sales and validating registry identification cards; and

2. The qualified patient authorizes the cabinet to share cardholder information with law enforcement for the purpose of validating registry identification cards; and

(h) A notarized signature page signed by the qualified patient attesting that:

1. The qualified patient verifies and affirms that all of the information provided in and with his or her application is true and accurate;

2. The qualified patient understands that if the cabinet later determines any of the information provided in his or her application to be false, misleading, or inaccurate, the cabinet may suspend or revoke any registry identification card issued to the qualified patient and any caregiver designated by the qualified patient; and

3. The qualified patient shall not divert medicinal cannabis to anyone who is not permitted to possess medicinal cannabis pursuant to KRS Chapter 218B and understands the potential penalties for doing so, including criminal prosecution and revocation of any registry identification card issued to the qualified patient by the cabinet.

(4) Pursuant to KRS 218B.055(7), a registry identification card application submitted by or on behalf of qualified patients under the age of eighteen (18) shall, in addition to the information required under subsection (3) of this section, submit:

(a) Documentation of diagnosis of a qualifying medical condition by a practitioner other than the medicinal cannabis practitioner who provided the written certification for the use of medicinal cannabis; and

(b) A statement signed by the custodial parent or legal guardian with responsibility for health care decisions for the minor qualified patient stating that the custodial parent or legal guardian agrees to:

1. Allow the minor qualified patient to use medicinal cannabis;

2. Serve as the minor qualified patient's designated caregiver; and

3. Control the acquisition, possession, dosage, and frequency of use of medicinal cannabis by the minor qualified patient.

(5) Except as provided in Section 5(4) of this administrative regulation, a caregiver may submit a registry identification card application following issuance of a registry identification card to the qualified patient who designated the caregiver in his or her registry identification card application. A caregiver shall submit a registry identification card application for each registered qualified patient that designated the caregiver in his or her application. Except as provided in KRS 218B.055(3)(b), a caregiver shall assist no more than three (3) registered qualified patients with the use of medicinal cannabis at any given time.

(6) A registry identification card application submitted by a caregiver shall include:

(a) The full name, address, telephone number, email address, date of birth, Social Security number, and driver's license number of the caregiver;

(b) The full name and registry identification card number of the qualified patient who designated the applicant to be his or her caregiver;

(c) The application fee for a designated caregiver;

(d) An attestation that:

1. The caregiver authorizes the cabinet to share cardholder information with licensed dispensaries for the purpose of sales and validating registry identification cards; and

2. The caregiver authorizes the cabinet to share cardholder information with law enforcement for the purpose of validating registry identification cards; and

(e) A notarized signature page signed by the caregiver attesting that:

1. The caregiver verifies and affirms that all of the information provided in and with his or her application is true and accurate;

2. The caregiver understands that if the cabinet later determines any of the information provided in his or her application to be false, misleading, or inaccurate, the cabinet may suspend or revoke any registry identification card issued to the caregiver by the cabinet;

3. The caregiver agrees to be designated as the caregiver for the registered qualified patient identified in his or her application; and

4. The caregiver shall not divert medicinal cannabis to anyone other than the registered qualified patient to whom he or she is connected through the cabinet's registration process and understands the potential penalties for unlawfully diverting medicinal cannabis, including criminal prosecution and revocation of any registry identification card issued to the caregiver by the cabinet.

(7) Pursuant to KRS 218B.055(8), a registry identification card application submitted by or on behalf of visiting qualified patients shall include:

(a) The full name, address, telephone number, email address, date of birth, Social Security number, and driver's license number of the applicant, except that if the applicant is homeless an address where the applicant may be reached shall be provided to the cabinet;

(b) A copy of his or her valid out-of-state registry identification card;

(c) Documentation that he or she has been diagnosed with a qualifying medical condition as defined by KRS 218B.010(26), which shall consist of one (1) or more medical records containing an express statement of diagnosis from a physician or advanced practice registered nurse;

(d) The application fee for a visiting qualified patient;

(e) An attestation that:

1. The visiting qualified patient authorizes the cabinet to share cardholder information with licensed dispensaries for the purpose of sales and validating registry identification cards; and

2. The visiting qualified patient authorizes the cabinet to share cardholder information with law enforcement for the purpose of validating registry identification cards; and

(f) A notarized signature page signed by the visiting qualified patient attesting that:

1. The visiting qualified patient verifies and affirms that all of the information provided in and with his or her application is true and accurate;

2. The visiting qualified patient understands that if the cabinet later determines any of the information provided in his or her application to be false, misleading, or inaccurate, the cabinet may suspend or revoke any registry identification card issued to the visiting qualified patient; and

3. The visiting qualified patient shall not divert medicinal cannabis to anyone who is not permitted to possess medicinal cannabis pursuant to KRS Chapter 218B and understands the potential penalties for doing so, including criminal prosecution and revocation of any registry identification card issued to the visiting qualified patient by the cabinet.

### Section 3. Renewing Registry Identification Cards.

(1) To renew a registry identification card, an applicant shall use the registry identification card renewal application form prescribed by the cabinet that contains the items required by Section 2 of this administrative regulation. The renewal application shall be made available through the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>. An applicant shall submit a registry identification card renewal application to the cabinet in the manner prescribed by the application instructions.

(2) A registered qualified patient applying to renew a registry identification card shall submit to the cabinet a written certification issued by a medicinal cannabis practitioner to the patient within ninety (90) calendar days immediately preceding the date of the renewal application submission.

(3) A registered qualified patient shall submit a registry identification card renewal application to the cabinet no later than thirty (30) calendar days prior to the expiration date on the card.

(4) Except as provided in Section 5(4) of this administrative regulation, a designated caregiver may submit a registry identification card renewal application following issuance of a

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registry identification card to the registered qualified patient who designated the caregiver in his or her renewal application. A designated caregiver shall submit a registry identification card renewal application for each registered qualified patient that designated the caregiver in his or her renewal application.

### Section 4. Fees.

(1) To apply for or renew a registry identification card, the application fees are:

- (a) Twenty-five (25) dollars for qualified patients;
- (b) Twenty-five (25) dollars for visiting qualified patients; and
- (c) Twenty-five (25) dollars for designated caregivers.

(2) The fees established by this section shall be paid by credit card or automated clearing house (ACH) transfer at the time of application submission to the cabinet. All fees to apply for a registry identification card are nonrefundable.

### Section 5. Cabinet Action on Applications; Application Denial.

(1) The cabinet shall acknowledge receipt of an initial or renewal application for a registry identification card within fifteen (15) calendar days of receipt. The cabinet shall review each application to determine whether the application is complete.

(2) The cabinet shall provide notification to applicants as to whether an initial or renewal application for a registry identification card has been approved or denied within thirty (30) calendar days of receiving an application and determining it is complete. Any application denials shall be done in accordance with KRS 218B.065(2), (3), (4), (5), (7), and (8), including:

(a) Providing written notice of the denial and the reason(s) to the applicant; and

(b) Providing written notice that the applicant may, within thirty (30) calendar days after the date of the mailing of the cabinet's notice, file a written request for an administrative hearing on the application. Any hearing resulting from the applicant's written request shall be conducted in accordance with KRS Chapter 13B.

(3) Except as provided in subsection (4) of this section, the cabinet shall issue registry identification cards to qualified patients, designated caregivers, or visiting qualified patients within five (5) calendar days of approving their initial or renewal applications. An individual designated as a caregiver shall be issued a registry identification card for each registered qualified patient to whom he or she is connected through the cabinet's registration process.

(4) Pursuant to KRS 218B.065(2)(b), the cabinet shall not issue a valid registry identification card to a qualified patient who is younger than eighteen (18) years of age unless the designated caregiver application for the custodial parent or legal guardian with responsibility for health care decisions for the qualified patient is approved.

(5) Registry identification cards issued by the cabinet shall include the items required by KRS 218B.060(2).

### Section 6. Cardholder Responsibilities.

(1) A cardholder shall adhere to and comply with the notification requirements to the cabinet contained in KRS 218B.070(1)(a) through (e) and comply with the requirements for returning or disposing of medicinal cannabis contained in KRS 218B.070(2) and (5). A cardholder shall provide any required notifications to the cabinet via electronic mail to [kymedcancards@ky.gov](mailto:kymedcancards@ky.gov).

(2) During the application process, an applicant for a registry identification card shall, upon discovery of any change in facts or circumstances reflected in the application submitted to the cabinet, notify the cabinet in writing of the change or any newly discovered fact or circumstance that would have been included in the application if known at the time the application was submitted. The notification required under this section shall be sent via electronic mail to [kymedcancards@ky.gov](mailto:kymedcancards@ky.gov) within twenty-four (24) hours of discovery. Failure to timely notify the cabinet of a change or newly discovered facts or circumstances may result in denial of the application.

(3) A cardholder shall obtain medicinal cannabis and medicinal cannabis products in the commonwealth from a dispensary licensed by the cabinet.

(4) The cabinet shall conduct cardholder surveys to request information regarding their ability to obtain timely affordable access to medicinal cannabis in their area and other items relevant to the Kentucky Medical Cannabis Program.

### Section 7. Revocation or Suspension of a Registry Identification Card.

(1) Pursuant to KRS 218B.075(1), any cardholder who sells, distributes, or dispenses medicinal cannabis to a person who is not permitted to possess or use medicinal cannabis under KRS Chapter 218B shall have his or her registry identification card revoked and shall be subject to other penalties including criminal prosecution.

(2) The cabinet may revoke or suspend a cardholder's registry identification card if the cardholder knowingly commits multiple violations or a serious violation of KRS Chapter 218B or 915 KAR Chapter 2.

(3) The cabinet shall provide written notice via certified mail to the cardholder of any suspension or revocation of his or her registry identification card. The cardholder may, within thirty (30) days after the date of the mailing of the cabinet's notice, file a written request with the cabinet for an administrative hearing regarding the revocation or suspension. The hearing shall be conducted in compliance with the requirements of KRS Chapter 13B.

### Section 8. Provisional Registration Receipt System.

(1) Pursuant to KRS 218B.060(5), the cabinet shall operate a provisional registration receipt system for registered qualified patients, designated caregivers, and visiting qualified patients. A valid provisional registration receipt shall be accepted by licensed dispensaries in place of a registry identification card.

(2) A provisional registration receipt provided by the cabinet shall include the items required by KRS 218B.060(5)(a).

(3) A provisional registration receipt shall be provided by the cabinet via electronic mail to the applicant upon submission of an apparently complete application that contains all of the applicable information and documentation required by Section 2 of this administrative regulation. A provisional registration receipt shall be valid for forty-five (45) days from the date of issuance, or until:

(a) The cabinet issues a permanent registry identification card to the applicant; or

(b) The cabinet denies the applicant's application.

(4) If an applicant for a registry identification card is ultimately denied, the applicant shall immediately destroy the provisional registration receipt provided to him or her and return any unused medicinal cannabis products to a licensed dispensary for destruction.

(5) A registered qualified patient or designated caregiver shall only use a provisional registration receipt issued under this section to purchase medicinal cannabis in accordance with any recommendation or limitation as to the form and dosage contained in the written certification provided to the registered qualified patient by a medicinal cannabis practitioner.

SAM FLYNN, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 6, 2024

FILED WITH LRC: March 14, 2024 at 11:50 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on May 22, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 15, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2024. Send written notification of intent to attend the public hearing or written comments

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on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Oran S. McFarlan, III or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the issuance, renewal, suspension, and revocation of registry identification cards, including the creation of an application form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140(1)(c)(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing procedures for the issuance, renewal, suspension, and revocation of registry identification cards, including the creation of an application form. This administrative regulation establishes those procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the procedures for the issuance, renewal, suspension, and revocation of registry identification cards.

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

(a) How the amendment will change this existing administrative regulation: Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects individuals that desire to apply for and subsequently renew registry identification cards for the Kentucky Medical Cannabis program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals that desire to obtain registry identification cards to participate in the Kentucky Medical Cannabis Program must follow the initial and renewal application procedures and requirements identified in this administrative regulation in order to be eligible to receive a registry identification card.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The annual fee to apply for a registry identification card for a qualified patient, visiting qualified patient, or designated caregiver is \$25.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals that receive registry identification cards from the Cabinet for Health and Family Services are authorized to participate in the Kentucky Medical Cannabis Program through the expiration date of their cards.

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

(a) Initially: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward approving cardholders as well implementation and continued operation of the electronic monitoring system required by KRS 218B.140, including the patient and caregiver registry.

(b) On a continuing basis: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward approving cardholders as well implementation and continued operation of the electronic monitoring system required by KRS 218B.140, including the patient and caregiver registry.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer the patient and caregiver registry.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, this administrative regulation establishes initial application fees and renewal fees for registry identification cards (\$25 per application submitted by a qualified patient, visiting qualified patient, or designated caregiver).

(9) TIERING: Is tiering applied? Tiering is not applied. All individuals applying for or seeking to renew registry identification cards will be treated equally.

### FISCAL NOTE

(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 Medical Cannabis Program within 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 Chapter 218B, specifically KRS 218B.140(1)(c)(1), KRS Chapter 387, KRS Chapter 13B.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

The commonwealth will receive initial application fees paid by individuals seeking registry identification cards during the first year. At this time, it is not known how many individuals will apply for registry identification cards and pay the attendant fees.

(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 commonwealth will receive annual renewal fees for registry identification cards from individuals that desire to continue participating in the Kentucky Medical Cannabis Program. The commonwealth will also continue to receive additional initial application fees for registry identification cards.

(c) How much will it cost to administer this program for the first year? The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398.

(d) How much will it cost to administer this program for subsequent years? The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The cabinet does not anticipate any cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? An individual applying for a registry identification card is required to pay an initial application fee at the time of initial application submission (\$25).

(d) How much will it cost the regulated entities for subsequent years? Individuals seeking to renew their registry identification cards are required to pay an annual renewal fee at the time of renewal application submission (\$25).

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward approving cardholders as well implementation and continued operation of the electronic monitoring system required by KRS 218B.140, including the patient and caregiver registry. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 2.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office of the Secretary  
(New Administrative Regulation)**

**915 KAR 2:020. Supply limits and equivalency formula.**

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing supply limits and an equivalency formula for medicinal cannabis. This administrative regulation establishes the supply limits and equivalency formula for the Kentucky Medical Cannabis Program.

**Section 1. Medicinal Cannabis Supply Limits.**

(1) For the purpose of establishing supply limits for the Kentucky Medical Cannabis Program:

(a) A daily supply of medicinal cannabis for cardholders consists of 3.75 grams of raw plant material, 1 gram of concentrate, or 130 milligrams of delta-9 tetrahydrocannabinol (THC) infused into a medicinal cannabis product, such as an edible, pill, capsule, oil, liquid, or tincture;

(b) An uninterrupted ten (10) day supply of medicinal cannabis for cardholders consists of 37.5 grams of raw plant material, 9.5 grams of concentrate, or 1,300 milligrams of THC infused into a medicinal cannabis product; and

(c) An uninterrupted thirty (30) day supply of medicinal cannabis for cardholders consists of 112 grams of raw plant material, 28 grams of concentrate, or 3,900 milligrams of THC infused into a medicinal cannabis product.

(2) The following non-consumable medicinal cannabis products shall not count toward a patient's supply limits:

- (a) Ointments;
- (b) Soaps;
- (c) Lotions; and
- (d) Other topical agents.

(3) In making recommendations for dosage of medicinal

cannabis, a medicinal cannabis practitioner may recommend, and a registered qualified patient or his or her designated caregiver may legally purchase and possess, an amount of medicinal cannabis in excess of the thirty (30) day supply of medicinal cannabis established in this section if the medicinal cannabis practitioner reasonably believes that the standard thirty (30) day supply would be insufficient in providing the patient with uninterrupted therapeutic or palliative relief. If a medicinal cannabis practitioner makes the determination to increase the qualified patient's dosage above the thirty (30) day supply limit, the medicinal cannabis practitioner shall:

(a) Document the dosage recommendation and the rationale in the qualified patient's medical record; and

(b) Document the dosage recommendation and the rationale in the qualified patient's written certification in the state's designated medicinal cannabis practitioner registry.

(4) Beginning January 1, 2026, the cabinet shall annually review the supply limits established in this section to determine if any adjustments should be made. In making this determination, the cabinet shall consider standards and procedures that have been found to be best practices relative to the use of medicinal cannabis, any scientific research studies regarding dosage and the health effects of medicinal cannabis, and any input from the Board of Physicians and Advisors, the Kentucky Board of Medical Licensure, the Kentucky Board of Nursing, and the Kentucky Center for Cannabis.

**Section 2. Standards for Determining Equivalency.**

(1) The following potency equivalency formula shall be used for determining the amount of raw plant material that medicinal cannabis products are considered the equivalent to:

(a) Step 1. Weight of raw plant material (in grams) x average THC potency percentage of raw plant material = amount of concentrate (in grams).

(b) Step 2. Convert amount of concentrate in grams to milligrams.

(c) Step 3. Amount of concentrate (in milligrams) x average THC potency percentage of concentrate = preliminary amount of THC infused medicinal cannabis products (in milligrams).

(d) Step 4. Preliminary amount of THC infused medicinal cannabis products (in milligrams) / 5 = final amount of THC infused medicinal cannabis products (in milligrams).

(2) In Step 4 of the equivalency formula, the preliminary amount of THC infused medicinal cannabis products (in milligrams) is reduced by a factor of five (5) based on pharmacokinetic equivalency research showing one (1) milligram of THC in edible form is equivalent to approximately five (5) milligrams of THC in inhalable form.

(3) For example:

(a) 28 grams of raw plant material x 25% average THC potency = 7 grams of concentrate.

(b) 7 grams is equivalent to 7,000 milligrams.

(c) 7,000 milligrams of concentrate x 70% average THC potency = 4,900 milligrams.

(d) 4,900 milligrams / 5 = 980 milligrams of THC infused medicinal cannabis products.

SAM FLYNN, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 6, 2024

FILED WITH LRC: March 14, 2024 at 11:50 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on May 22, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 15, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard



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at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Oran S. McFarlan, III or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes supply limits of medicinal cannabis and an equivalency formula for medicinal cannabis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations for the medicinal cannabis program. This administrative regulation establishes supply limits of medicinal cannabis and an equivalency formula for medicinal cannabis.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes supply limits of medicinal cannabis and an equivalency formula for medicinal cannabis.

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

(a) How the amendment will change this existing administrative regulation: Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects medicinal cannabis practitioners, patients, designated caregivers, and the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

(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: Medicinal cannabis practitioners will use the supply limits when making dosage recommendations for patients, and cannabis businesses will use the equivalency formula for their products.

(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 anticipated cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medicinal cannabis practitioners will use the supply limits when making dosage recommendations for patients, and cannabis businesses may determine the amount of raw plant material to which medicinal cannabis products are considered to be equivalent.

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

(a) Initially: This administrative regulation establishes supply limits and an equivalency formula for medicinal cannabis. There is no anticipated cost to implement this administrative regulation.

(b) On a continuing basis: This administrative regulation

establishes supply limits and an equivalency formula for medicinal cannabis. There is no anticipated cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All medicinal cannabis practitioners will be treated equally.

### FISCAL NOTE

(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 Medical Cannabis Program within 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 218B.140.

(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 not expected to generate revenue for state or local government 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 is not expected to generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation establishes supply limits and an equivalency formula for medicinal cannabis. There is no anticipated cost to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation establishes supply limits and an equivalency formula for medicinal cannabis. There is no anticipated cost to implement this administrative regulation on a continuing basis.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The cabinet does not anticipate any cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? The cabinet does not anticipate any cost for the first year.

(d) How much will it cost the regulated entities for subsequent years? The cabinet does not anticipate any cost in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] It is not anticipated that this administrative regulation will have an overall negative or adverse economic impact of \$500,000 or more on the Cabinet for Health and Family Services.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of the Secretary**  
**(New Administrative Regulation)**

**915 KAR 2:030. Written certifications.**

RELATES TO: KRS Chapter 218B, 201 KAR 9:067, 201 KAR 20:067, KRS 218A.202

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations creating a standardized written certification form for use by medicinal cannabis practitioners. This administrative regulation establishes the written certification form for the Kentucky Medical Cannabis Program.

**Section 1. Medicinal Cannabis Practitioners.**

(1) The cabinet shall maintain a medicinal cannabis practitioner registry for the Kentucky Medical Cannabis Program as part of the state's designated electronic monitoring system.

(2) Medicinal cannabis practitioners shall register with the state's medicinal cannabis practitioner registry in accordance with written instructions provided by the cabinet and properly enter written certifications and dosage recommendations for qualified patients into the registry.

(3) Prior to providing a patient with a written certification, a medicinal cannabis practitioner shall comply with KRS 218B.050(4), including establishing a bona fide practitioner-patient relationship with the patient. A medicinal cannabis practitioner shall also comply with the respective administrative regulation promulgated by his or her state licensing board establishing professional standards for medicinal cannabis practitioners, 201 KAR 9:067 or 201 KAR 20:067, and be authorized to provide written certifications for use of medicinal cannabis to qualified patients by his or her state licensing board.

**Section 2. Written Certification Form.**

(1) When issuing a written certification for the use of medicinal cannabis to a patient, the medicinal cannabis practitioner shall use the form prescribed by the cabinet and available in the medicinal cannabis practitioner registry. The written certification form shall include:

(a) The medicinal cannabis practitioner's full name, license type (such as MD or APRN), license number, office address, telephone number, and email address;

(b) The date of the medicinal cannabis practitioner's examination of the qualified patient;

(c) The qualified patient's full name, date of birth, social security number, and email address;

(d) If the qualified patient is a minor, the custodial parent or legal guardian's full name, date of birth, social security number, email address, and phone number;

(e) Identification of the diagnosed qualifying medical condition(s);

(f) Attestations that the medicinal cannabis practitioner has:

1. Established a bona fide practitioner-patient relationship with the patient;

2. Diagnosed the patient, or confirmed a diagnosis provided by another healthcare provider, with a qualifying medical condition for which the medicinal cannabis practitioner believes that the patient may receive therapeutic or palliative benefit from the use of medicinal cannabis;

3. Reviewed a report of information from the electronic monitoring system established pursuant to KRS 218A.202 related to the patient for a period of time that covers at least the twelve (12) months immediately preceding the date of the report;

4. Consulted with the patient, or the patient's custodial parent or legal guardian responsible for providing consent to treatment if the patient is a minor, with respect to the possible risks and side effects associated with medicinal cannabis, including possible interactions between medicinal cannabis and any other drug or medication that the patient is taking at that time; and

5. Obtained the consent of the patient's custodial parent or legal guardian responsible for providing consent to treatment if the patient is a minor;

(g) The medicinal cannabis practitioner's signature and the date signed.

(2) An initial written certification shall be provided by the medicinal cannabis practitioner to the qualified patient during the course of an in-person examination. Subsequent written certifications for the purpose of renewing a registry identification card may be provided electronically or during the course of a telehealth consultation.

(3) Pursuant to KRS 218B.050(6)(d), within twenty-four (24) hours of providing a patient with a written certification for the use of medicinal cannabis, a medicinal cannabis practitioner shall record the issuance of the written certification in the state's designated medicinal cannabis practitioner registry.

(4) Pursuant to KRS 218B.050(6)(c), for the purpose of initially applying for a registry identification card, a written certification shall be valid for a period of not more than sixty (60) days. A medicinal cannabis practitioner may renew a written certification for not more than three (3) additional periods of not more than sixty (60) days each. Thereafter, the medicinal cannabis practitioner may issue another written certification to the patient for use in the registry identification card application process only after an in-person examination or an examination conducted via telehealth of the patient by the medicinal cannabis practitioner.

(5) Pursuant to KRS 218B.055(10), for the purpose of renewing a registry identification card, a written certification issued by a medicinal cannabis practitioner shall be valid if issued within ninety (90) days immediately preceding the date of a renewal application.

(6) When entering a written certification into the state's designated medicinal cannabis practitioner registry, a medicinal cannabis practitioner shall enter any recommendation or limitation as to the form and dosage of medicinal cannabis that can be dispensed to the registered qualified patient.

SAM FLYNN, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 6, 2024

FILED WITH LRC: March 14, 2024 at 11:50 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on May 22, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 15, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

**CONTACT PERSON:** Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

VOLUME 50, NUMBER 10 – APRIL 1, 2024

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Oran S. McFarlan, III or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a standardized written certification form for use by medicinal cannabis practitioners.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations for the medicinal cannabis program. This administrative regulation creates a standardized written certification form for use by medicinal cannabis practitioners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation creates a standardized written certification form for use by medicinal cannabis practitioners.

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

(a) How the amendment will change this existing administrative regulation: Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects medicinal cannabis practitioners, patients, designated caregivers, and the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

(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: Medicinal cannabis practitioners shall use the written certification form prescribed by the cabinet.

(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 anticipated cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medicinal cannabis practitioners can provide patients with written certifications required to become cardholders in the Kentucky Medical Cannabis Program.

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

(a) Initially: This administrative regulation creates a standardized written certification form for use by medicinal cannabis practitioners. There is no anticipated cost to implement this administrative regulation.

(b) On a continuing basis: This administrative regulation creates a standardized written certification form for use by medicinal cannabis practitioners. There is no anticipated cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All medicinal cannabis practitioners will be treated equally.

FISCAL NOTE

(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 Medical Cannabis Program within 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 218B.140.

(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 not expected to generate revenue for state or local government 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 is not expected to generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation creates a standardized written certification form for use by medicinal cannabis practitioners. There is no anticipated cost to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation creates a standardized written certification form for use by medicinal cannabis practitioners. There is no anticipated cost to implement this administrative regulation on a continuing basis.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The cabinet does not anticipate any cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? The cabinet does not anticipate any cost for the first year.

(d) How much will it cost the regulated entities for subsequent years? The cabinet does not anticipate any in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] It is not anticipated that this administrative regulation will have an overall negative or adverse economic impact of \$500,000 or more on the Cabinet for Health and Family Services.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of the Secretary**  
**(New Administrative Regulation)**

**915 KAR 2:040. Procedures to publish list of varieties of medicinal cannabis.**

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing procedures to publish and annually update a list of cannabis varieties or strains that possess a low but effective level of tetrahydrocannabinol, including the substance cannabidiol. This administrative regulation establishes those procedures.

Section 1. List of Varieties or Strains of Medicinal Cannabis.

(1) Beginning January 1, 2026, the cabinet shall conduct regular surveys of licensed cultivators and producers in the Commonwealth to obtain the following information:

(a) A current list of cannabis varieties or strains being grown and cultivated in the Commonwealth;

(b) The average total tetrahydrocannabinol (THC) in each variety or strain based on the respective certificates of analysis;

(c) The average total cannabidiol (CBD) in each variety or strain based on the respective certificates of analysis; and

(d) The average terpenoid type and concentration in each variety or strain based on the respective certificates of analysis.

(2) Beginning January 1, 2026, the cabinet shall conduct regular surveys of licensed dispensaries in the Commonwealth to obtain a list of any varieties of medicinal cannabis or medicinal cannabis products requested by cardholders that are not available for sale in the Commonwealth.

(3) On or before December 1, 2026, the cabinet shall review, compile, and publish the information obtained from the surveys required by this section in print materials for cardholders available on the Web site for the Kentucky Medical Cannabis Program at <https://kymedcan.ky.gov>. Along with listing the cannabis varieties or strains being grown and cultivated in the Commonwealth, the printed materials may include information regarding:

(a) Types of cannabis;

(b) Types and general effects of THC;

(c) Types and general effects of cannabinoids;

(d) Types and general effects of terpenoids or terpenes;

(e) Potential side effects of medicinal cannabis use and consumption;

(f) Forms of medicinal cannabis and average activation times for different products;

(g) Dosage or serving size information;

(h) How to obtain appropriate services or treatment for medicinal cannabis abuse;

(i) How to dispose of unused medicinal cannabis; and

(j) Any other information that the cabinet deems appropriate for inclusion.

(4) The cabinet shall annually review and update the printed materials for cardholders, including the list of cannabis varieties or strains being grown and cultivated in the Commonwealth.

SAM FLYNN, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 6, 2024

FILED WITH LRC: March 14, 2024 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by May 15, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be

given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Oran S. McFarlan, III or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to publish and annually update a list of varieties of cannabis that possess a low but effective level of tetrahydrocannabinol.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations for the medicinal cannabis program. This administrative regulation sets out procedures to publish and annually update a list of varieties of cannabis that possess a low but effective level of tetrahydrocannabinol.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to publish and annually update a list of varieties of cannabis that possess a low but effective level of tetrahydrocannabinol.

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

(a) How the amendment will change this existing administrative regulation: Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects licensed cultivators and producers, cardholders, and the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

(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: Licensed cultivators and producers shall participate in surveys conducted by the cabinet regarding the types of cannabis varieties or strains being grown and cultivated in the commonwealth, and the Kentucky Medical Cannabis Program shall compile the information received into print materials for cardholders available on the program's website. The Kentucky Medical Cannabis Program shall annually review and update the information in the print materials.

(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 a time investment for licensed cultivators and producers to participate in the surveys conducted by the cabinet, and a cost associated with the cabinet compiling the information into print materials for cardholders.

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(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Information regarding the varieties of cannabis strains being grown and cultivated in the commonwealth will be readily available to cardholders.

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

(a) Initially: This administrative regulation establishes procedures to publish and annually update a list of varieties of cannabis that possess a low but effective level of tetrahydrocannabinol, starting in 2026. There is no anticipated cost to implement this administrative regulation in the first year.

(b) On a continuing basis: This administrative regulation establishes procedures to publish and annually update a list of varieties of cannabis that possess a low but effective level of tetrahydrocannabinol. There is an anticipated cost to implement this administrative regulation on a continuing basis as information obtained from surveys must be reviewed annually and print materials updated to reflect the new information received.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to survey licensees, review responses, and compile and regularly update printed materials.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All licensed cultivators and producers will be treated equally.

FISCAL NOTE

(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 Medical Cannabis Program within 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 218B.140.

(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 not expected to generate revenue for state or local government 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 is not expected to generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation establishes procedures to publish and annually update a list of varieties of cannabis that possess a low but effective level of tetrahydrocannabinol, starting in 2026. There is no anticipated cost to implement this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation establishes procedures to publish and annually update a list of varieties of cannabis that possess a low but effective level of tetrahydrocannabinol. There is an anticipated cost to implement this administrative regulation on a continuing basis as information obtained from surveys must be reviewed annually and print materials updated to reflect the new information received. The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be approximately \$2,400,000, and a portion of those staffing costs will go

toward conducting licensee surveys and compiling that information into print materials for cardholders.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The cabinet does not anticipate any cost savings in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cabinet does not anticipate any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? The cabinet does not anticipate any cost for licensed cultivators and producers arising out of this administrative regulation in the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be a time investment for licensed cultivators and producers to participate in the surveys conducted by the cabinet.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A portion of those funds will go toward compiling, publishing, and annually updating a list of varieties of cannabis that possess a low but effective level of tetrahydrocannabinol as required by KRS 218B.140(1)(c)(8). The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 2.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of March 11, 2024

**Call to Order and Roll Call**

The March meeting of the Administrative Regulation Review Subcommittee was held on Monday, March 11, 2024 at 1:00 p.m. in Room 149 of the Capitol Annex. Senator Stephen West, Co-Chair, called the meeting to order, and roll call was taken.

**Present were:**

**Members:** Senator Stephen West, Co-Chair; Representative Derek Lewis, Co-Chair; Senators Julie Raque Adams and Damon Thayer; Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

**LRC Staff:** Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

**The Administrative Regulation Review Subcommittee met on Monday, March 11, 2024, and submits this report:**

**The subcommittee determined that the following administrative regulation was deficient pursuant to KRS 13A.030(2)(a):**

**BOARDS AND COMMISSIONS: Board of Social Work**

201 KAR 023:170. Telehealth and social work practice. Hank Cecil, chair, and Marc Kelly, executive director, represented the board. Michelle Sanborn, president, Children's Alliance, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Mr. Kelly stated that the board filed proposed amendments to this administrative regulation to address concerns by the Children's Alliance. The Children's Alliance provided fifteen (15) specific concerns, and the board was able to come to an agreement for all except six (6).

In response to a question by Co-Chair West, Ms. Sanborn stated that the Children's Alliance had remaining concerns, including an insufficient definition for "telehealth service", which seemed to expand beyond the statutory limits. This definition was different between the administrative regulation itself and the glossary in material incorporated by reference. Additionally, communication, rather than just teletherapy services themselves, required encryption, which could be burdensome and costly. Section 2 of this administrative regulation needed clarification because it was unclear if the requirements were for each patient contact or initial contact only. Remaining concerns had been provided to members prior to this subcommittee meeting.

In response to a question by Co-Chair West, Mr. Cecil stated that the board wished to defer consideration of this administrative regulation to the April subcommittee meeting to continue to work on the remaining provisions of concern.

Senator Raque Adams stated that this subcommittee had made clear members' wishes that this administrative regulation be revised to address stakeholder concerns.

In response to a question by Representative Grossberg, Mr. Cecil stated that, while the board had informed the subcommittee that stakeholder agencies other than Children's Alliance were in support of this administrative regulation, he was not at liberty to name those agencies at this time.

Representative Grossberg stated that, while he was glad to see the parties closer to a compromise, legislation had been proposed to address these issues. Because a consensus had not been reached in a timely manner, a finding of deficiency was likely. In response, Mr. Cecil stated that there had been misunderstandings regarding certain provisions. There were free digital applications to address concerns about encryption requirements. The board needed more time to continue working with stakeholders.

In response to questions by Co-Chair West and Representative Grossberg, Ms. Sanborn stated that, while emails had been exchanged, the board had been unable to meet with Children's Alliance in person since January 3, 2024. Her request to speak to the board at their regular meeting was declined, although she was allowed to attend.

A motion was made and seconded at the December 11, 2023

**Guests:** Cassie Trueblood, Educational Professional Standards Board; Carrie Bass, Jessica Beaubien, Public Pension Authority; Corey Ann Jackson, Charla Sands, Department of Military Affairs; Joseph P. Donohue, Board of Accountancy; Hank Cecil, Marc Kelly, Board of Social Work; Anna Lucio, Clint Quarles, Department of Agriculture; Louanna Aldridge, Tony Hatton, Michael Mullins, Tyler Shields, Department for Environmental Protection; Kyle Ray, Christy Walker, Department of Vehicle Regulation; Jonathan Scott, Department for Medicaid Services; Edward Clark, Phyllis Sosa, Department for Aging and Independent Living; Laura Begin, Clifford Bryant, Department for Community Based Services; Michelle Sanborn, Children's Alliance, and Tom Fitzgerald, Kentucky Resources Council.

subcommittee meeting to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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.

Senator Raque Adams made a motion, seconded by Senator Thayer, to find this administrative regulation deficient. A roll call vote was conducted and, with seven (7) votes for deficiency, this administrative regulation was found deficient.

Representative Bridges explained his yes vote by stating that the board had had sufficient time to address concerns about this proposed administrative regulation. The board needed to be more accessible to stakeholders during the development of administrative regulations.

Representative Grossberg explained his yes vote by stating that, while he believed that the board had tried to resolve the issues of concern, there had been insufficient progress, especially without any stakeholders publicly supporting this administrative regulation. *Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 8 was added to this administrative regulation to reflect the finding of deficiency.*

**Administrative Regulations Reviewed by this Subcommittee:**

**EDUCATION AND LABOR CABINET: Education Professional Standards Board: Certification Procedures**

016 KAR 004:020. Certification requirements for teachers of exceptional children. Cassie Trueblood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph 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.

**FINANCE AND ADMINISTRATION CABINET: Kentucky Public Pensions Authority: General Rules**

105 KAR 001:390. Employment after retirement. Carrie Bass, staff attorney supervisor, and Jessica Beaubien, policy analyst, represented the authority.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 and 6 through 8 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 4 to clarify that the agency may also consider rules issued by the US Department of Labor for determining whether a worker is an employee or an independent contractor under federal wage and hour law; and (3) to amend Sections 4, 5, and 7 for clarity, including to correct cross references. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 001:455. In line of duty Hazardous Retirement Disability Benefits.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY

AUTHORITY paragraphs and Sections 1, 5, 7 through 11, 13, 14, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to add a definition for "medical examiner"; (3) to amend Sections 6 and 7 to specify that the medical examiner is the only third-party vendor that can order an independent evaluation by relocating language; and (4) to reorganize Section 14 for succinctness. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 001:470. Agency communications.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3, 6, 11, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency the amendments were approved.

**GENERAL GOVERNMENT CABINET: Department of Military Affairs: Disaster and Emergency Circumstances**

106 KAR 001:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure. Corey Ann Jackson, legislative liaison, and Charla Sands, counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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.

**BOARDS AND COMMISSIONS: State Board of Accountancy**

201 KAR 001:200. Board of Accountancy Scholarship Funding. Joseph Donohue, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT CABINET: Department of Agriculture: Ginseng**

302 KAR 045:020. Ginseng Growers Pilot Program. Anna Lucio, marketing specialist, and Clint Quarles, attorney, represented the department.

In response to a question by Co-Chair Lewis, Mr. Quarles stated that the pilot program was designed to generate a source for propagating native ginseng plants and seeds. This administrative regulation would address the gap between the required harvesting period and the requirements pertaining to holding ginseng out of season. Ms. Lucio stated that Kentucky was traditionally considered the largest harvester of wild ginseng. The pilot program would allow participants to take advantage of available federal specialty-crop grants and insurance programs and eventually allow growers the opportunity to build a sustainable and viable cultivated ginseng crop program separate from wild ginseng.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 1 through 5; and incorporated material to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Special Waste**

401 KAR 045:010. Definitions for 401 KAR Chapter 045. Tony Hatton, commissioner, and Michael Mullins, environmental scientist consultant, represented the department. Tom Fitzgerald, former director, Kentucky Resources Council, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair West, Mr. Fitzgerald stated that this package of administrative regulations should be found deficient because these requirements were not protective of farmers, farmland, and the public. These changes were the result of

Senate Bill 213 from the 2023 Regular Session of the General Assembly, which was advanced after complaints by cities regarding the cabinet's implementation of provisions for land application of biosolids. In 2018, US EPA's Inspector General examined the sludge regulation program and determined that there were over 350 contaminants of concern, other than those for which regular sampling was being conducted. Maine had prohibited land application of biosolids after serious contamination relating to Per- and polyfluoroalkyl substances (PFAS), known as "forever chemicals." Before these sewage sludges are used by farmers, these biosolids should be tested for contamination. Cities were only required to inform farmers receiving biosolids for land application that, "biosolids may contain constituents from an industrial pretreatment program." This disclaimer was insufficient to alert farmers of potential risks.

In response to a question by Co-Chair West, Mr. Hatton stated that the majority of cities were disposing of sewage sludge via landfills. Disposing of these biosolids, which were a non-optimal result of treating wastewater, was becoming more challenging. Land application of biosolids was an alternative to landfills. Statutory requirements required these administrative regulations to comply with 40 C.F.R. Part 503. The department was continuing to research the issues around PFAS, but did not believe it had the statutory authority to establish standards for contaminants not currently required to be regulated in Kentucky, except on a case-by-case basis and under certain circumstances, as established in 40 C.F.R. Part 503.

Representative Frazier Gordon stated that a disclaimer for farmers who accepted biosolids sludge for land application seemed like a prudent idea.

In response to a question by Co-Chair Lewis, Mr. Hatton stated that US EPA did not submit comments regarding this regulatory package. If US EPA wished to include other contaminant standards, those would be added to 40 C.F.R. Part 503.

In response to a question by Co-Chair Lewis, Mr. Fitzgerald stated that the cabinet was not limited by 40 C.F.R. Part 503 and Senate Bill 213 from the 2023 Regular Session of the General Assembly. The cabinet had broad authority under KRS Chapter 224 to establish additional, reasonable requirements as necessary. This program was at that point of needing those additional requirements, including broad-spectrum testing of sludges to be used for land application and a more comprehensive disclaimer for farmers accepting biosolids.

In response to questions by Representative Bridges, Mr. Hatton stated that sludge analysis for PFAS might be in the cost range of \$2,500 to \$3,000. The department's laboratory team developed procedures for testing sludge for PFAS; however, it was a complex process. Sampling procedures related to PFAS required strict protocols to prevent false positives from artificial introduction of PFAS from other sources in the environment. Because sources of contamination fluctuated significantly, sampling would need to be done on a frequent basis in order to provide accurate data. That would not be viable for many smaller municipalities. The department had not received a permit application for a new landfarm application in two (2) years. Mr. Fitzgerald stated that, in addition to the costs of sampling and testing, it was also important to consider the costs associated with contamination, such as compensation to landowners, litigation, and remediation.

In response to questions by Co-Chair West, Mr. Fitzgerald stated that US EPA's first priority related to PFAS was public drinking water, followed by wastewater discharges. Sewage sludge seemed to be a lower priority. US EPA might classify PFAS as a hazardous substance under Superfund provisions, which would include some farms. It would likely take years for US EPA to move forward. Litigation was also impacting the decisions of cities. Farmers needed to be alerted that there was a regulatory lag. Contaminants classified as hazardous would result in sampling under high and low flow scenarios, careful documentation, and management to protect municipalities from litigation. Anaerobic digestion of sludges was being used in some regions to reduce odors and other negative impacts of biosolids disposal. Some newer facilities were able to filter PFAS. Mr. Hatton stated that the prioritization related to PFAS was derived from historic protocols for

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addressing contamination. PFAS in public drinking water supplies was manageable with adequate resources. Other PFAS contamination was more complex to mitigate. There might be liability for failing to disclose risks.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 045:020. Types of special waste permits.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 045:025. Permit review and determination timetables.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 045:030. Obtaining a special waste site or facility permit.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3, 5 through 14, and 16 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 045:040. Modification, transfer or revocation of special waste permits.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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.

401 KAR 045:050. Public information procedures for special waste site or facility permits.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 4, and 6 through 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 045:080. Financial requirements and bonds for special waste facilities.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 045:100. Landfarming and composting of special waste.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 045:105. Land application of biosolids.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3 and 5 through 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 045:140. Conditions applicable to all special waste permits.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 045:160. Surface and groundwater monitoring and corrective action for special waste sites or facilities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 5(8) to include the division's standards, as established in KRS 224.1-400, to require abatement before approval of a groundwater assessment plan. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 045:250. Special waste permit fees.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **Merchant Electric Generating Facilities (MEGF)**

401 KAR 103:005. Definitions related to 401 KAR Chapter 103. Louanna Aldridge, environmental scientist consultant; Tony Hatton, commissioner; and Tyler Shields, environmental control supervisor, represented the department.

In response to a question by Co-Chair West, Mr. Hatton stated that the \$6,000 fee was an annual charge for each Merchant Electric Generating Facility in operation or decommissioning status.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 103:010. Notification and transfer procedures for merchant electric generating facilities.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, Sections 1 through 6, and incorporated material to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 103:020. Decommissioning standards.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 103:030. Financial requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY



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AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**TRANSPORTATION: Department of Vehicle Regulation: Driver's License**

601 KAR 012:080. Drivers license or personal ID renewal or replacement for persons without an established and fixed nighttime residence. Kyle Ray, staff attorney manager and assistant general counsel, and Christy Walker director, Driver License Division, represented the department.

Representative Bridges thanked the department for establishing provisions for youth to obtain identification cards.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services**

907 KAR 001:061. Payments for ambulance transportation. Jonathan Scott, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2(2)(g) and (h) to remove the coding system references and specify that the base rates shall be consistent with the Kentucky Medicaid Transportation Fee Schedule; (2) to amend Section 2(2)(h) to add a new paragraph stating that the rates in subsection (2) may be increased consistent with the fee schedule; (3) to amend Section 2(4)(b) to specify that the upper limit is \$3,500 or as increased consistent with the fee schedule; and (4) to amend Section 2(2) and (4) to include the Web site address for the fee schedule. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Aging and Independent Living: Aging Services**

910 KAR 001:170. Older Americans Act supportive services for the elderly. Edward Clark, branch manager, and Phyllis Sosa, assistant director, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1, 3 through 5, and 15 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Sections 3 and 4 to add references to "home modification"; (3) to amend Section 3 to add references to "natural supports" and "supportive service provider"; and (4) to amend Section 6 to include that "AAAIL" stands for "area agency of aging and independent living." Without objection, and with agreement of the agency, the amendments were approved.

**Protection and Permanency: Adult Services**

922 KAR 005:070. Adult protective services. Laura Begin, regulation coordinator, and Cliff Bryant, branch manager, Adult Protection Branch, 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 2, 4, 6, 7, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**The following administrative regulations were deferred or removed from the March 11, 2024, subcommittee agenda:**

**OFFICE OF THE GOVERNOR: Department of Veterans' Affairs: Veterans' Programs**

017 KAR 006:020. Kentucky Women Veterans Program and coordinating committee, administrative procedures.

017 KAR 006:030. Kentucky Wounded or Disabled Veterans Program, administrative procedures.

**KENTUCKY COMMISSION ON HUMAN RIGHTS**

104 KAR 001:010. Posting, distribution and availability of notices and pamphlets.

104 KAR 001:040. Guidelines for advertising employment or licensing opportunities.

104 KAR 001:050. Standards and procedures for providing equal employment opportunities.

104 KAR 001:080. Guidelines on fair housing.

104 KAR 001:100. Nondiscrimination on the basis of disability by a place of public accommodations, licensing agencies and trade organizations.

**BOARDS AND COMMISSIONS: Board of Licensed Professional Counselors**

201 KAR 036:100E. Counseling compact.

**TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish**

301 KAR 001:155. Commercial Fishing requirements.

**JUSTICE AND PUBLIC SAFETY CABINET: Internal Investigations Branch: Abuse Investigation**

500 KAR 013:020. Internal Investigations Branch.

**EDUCATION AND LABOR CABINET: Department of Education: Office of Instruction**

704 KAR 003:095. The use of a multitiered system of supports.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Data Analytics: Data Reporting and Public Use Data Sets**

900 KAR 007:030. Data reporting by health care providers.

900 KAR 007:040. Release of public data sets for health facility and services data.

**Office of Inspector General: Health Services and Facilities**

902 KAR 020:036. Operation and services; personal care homes.

902 KAR 020:048. Operation and services; nursing homes.

902 KAR 020:086. Operation and services; intermediate care facilities for individuals with intellectual disabilities.

**Department for Medicaid Services**

907 KAR 001:044. Coverage provisions and requirements regarding community mental health center behavioral health services.

**Payment and Services**

907 KAR 003:066. Nonemergency medical transportation waiver services and payments.

**Behavioral Health**

907 KAR 015:005. Definitions for 907 KAR Chapter 015.

907 KAR 015:090. Crisis continuum services provided or mediated by an administrative service organization.

**Department for Behavioral Health: Developmental and Intellectual Disabilities: Substance Abuse**

908 KAR 001:410. Recovery housing.

**Department for Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

921 KAR 002:015. Supplemental programs for persons who are aged, blind, or have a disability.

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**Protection and Permanency: Child Welfare**

922 KAR 001:140. Permanency services.

922 KAR 001:145. Subsidized permanent custody.

922 KAR 001:495. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

922 KAR 001:565. Service array for a relative or fictive kin caregiver.

**Adult Services**

922 KAR 005:120. Vulnerable adult maltreatment registry and appeals.

**The subcommittee adjourned at 2:15 p.m. The next meeting of this subcommittee was tentatively scheduled for April 8, 2024, at 1 p.m. in Room 149 of the Annex.**

OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(11), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. If a quorum was present and the regulation was not deferred, administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**HOUSE STANDING COMMITTEE ON TRANSPORTATION  
Meeting of February 27, 2024**

The House Transportation met on February 27, 2024 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on February 7, 2024, pursuant to KRS 13A.290(6):

603 KAR 005:155

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

**The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.**

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

**The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.**

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 27, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**SENATE STANDING COMMITTEE ON FAMILIES AND CHILDREN  
Meeting of March 12, 2024**

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Families and Children for its meeting on March 12, 2024, having been referred to the Committee on March 6, 2024, pursuant to KRS 13A.290(6):

**Referred on March 6, 2024**

922 KAR 001:520  
922 KAR 002:100  
922 KAR 002:165

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the March 12, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**SENATE AND HOUSE STANDING COMMITTEES ON AGRICULTURE  
Meetings of March 12 and 13, 2024**

The Senate and House Standing Committees on Agriculture met on March 12, 2024, and March 13, 2024, respectively, and a quorum was present at each. The following administrative regulations were available for consideration having been referred to the Committees on March 6, 2024, pursuant to KRS 13A.290(6):

302 KAR 002:010  
302 KAR 016:150

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

**The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.**

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

**The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.**

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 12, 2024 and March 13, 2024, meetings, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**SENATE STANDING COMMITTEE ON TRANSPORTATION  
Meeting of March 13, 2024**

The Senate Transportation met on March 13, 2024 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on February 7, 2024, pursuant to KRS 13A.290(6):

603 KAR 005:155

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

**The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.**

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The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 13, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH SERVICES Meeting of March 14, 2024

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health Services for its meeting on March 14, 2024, having been referred to the Committee on March 6, 2024, pursuant to KRS 13A.290(6):

- March 6, 2024
201 KAR 009:067
201 KAR 020:057
201 KAR 020:065
201 KAR 020:067
201 KAR 020:215
201 KAR 020:225
201 KAR 020:700
900 KAR 005:020
900 KAR 006:075

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

900 KAR 005:020

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the March 14, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

Agency Amendment - 900 KAR 5:020. State Health Plan for facilities and services.

Page 1
Section 2(1)
Line 19
After, "Update to the State Health Plan", insert "March"
Delete "February"

Material Incorporated by Reference: The amendments in this Agency Amendment are based upon the clean version of the Agency Amendment filed on 2/7/2024.

Title page
Header
Insert "March"
Delete "February"

Title
After "State Health Plan", insert "March"
Delete "February"

Page 54
V. Miscellaneous Services
B. Ambulatory Surgical Center
Review Criteria 5.

- After "conditions that are met.:", insert the following:
a. The applicant is an ophthalmologist, or an ophthalmology group, 100% owned by ophthalmologists, which has been organized and practicing in Kentucky for a period of ten (10) years prior to the date the application was submitted;
b. The applicant documents that the proposed ophthalmic outpatient surgery procedures have been performed for a period of five (5) years prior to the date the application was submitted;
c. The applicant documents that prior to March 30, 2016, it has invested no less than \$300,000.00 in advanced ophthalmic laser technology;
d. The proposed ASC is located in the county where the private office is currently located;
e. Only one (1) ASC shall be established by the applicant; and
f. The applicant documents that the proposed ASC shall be accredited within twelve (12) months of licensure by the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF), Accreditation Association for Ambulatory Health Care (AAAHC), American Osteopathic Association/Healthcare Facilities Accreditation Program (AOA/HFAP), The Joint Commission (TJC), or another accreditation organization approved by the United States Centers for Medicare and Medicaid Services;

Delete existing criteria 5. a. through f. in its entirety.

HOUSE STANDING COMMITTEE ON FAMILIES AND CHILDREN Meeting of March 14, 2024

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Families and Children for its meeting on March 14, 2024, having been referred to the Committee on March 6, 2024, pursuant to KRS 13A.290(6):

Referred on March 6, 2024

- 922 KAR 001:520
922 KAR 002:100
922 KAR 002:165

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the March 14, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON FAMILIES AND CHILDREN Meeting of March 21, 2024

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Families and Children for its meeting on March 21, 2024, having been referred to the Committee on March 6, 2024, pursuant to KRS 13A.290(6):

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**Referred on March 6, 2024**

- 201 KAR 009:067
- 201 KAR 020:057
- 201 KAR 020:065
- 201 KAR 020:067
- 201 KAR 020:215
- 201 KAR 020:225
- 201 KAR 020:700
- 900 KAR 006:075

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

900 KAR 005:020

**The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.**

With the approved amendment the following administrative regulation was found to not be deficient pursuant to KRS 13A.290(8) and 13A.030(2) at the March 21, 2024 meeting. The regulation was previously found deficient at the February 14, 2024 meeting.

900 KAR 005:020

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the March 21, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**Agency Amendment - 900 KAR 5:020. State Health Plan for facilities and services.**

Page 1  
Section 2(1)  
Line 19  
After, "Update to the State Health Plan", insert "March"  
Delete "February"

Material Incorporated by Reference: The amendments in this Agency Amendment are based upon the clean version of the Agency Amendment filed on 2/7/2024.

Title page  
Header  
Insert "March"  
Delete "February"

Title  
After "State Health Plan", insert "March"  
Delete "February"

Page 54  
V. Miscellaneous Services  
B. Ambulatory Surgical Center  
Review Criteria 5.

After "conditions that are met:", insert the following:

- a. The applicant is an ophthalmologist, or an ophthalmology group, 100% owned by ophthalmologists, which has been organized and practicing in Kentucky for a period of ten (10) years prior to the date the application was submitted;
- b. The applicant documents that the proposed ophthalmic outpatient surgery procedures have been performed for a period of five (5) years prior to the date the application was submitted;
- c. The applicant documents that prior to March 30, 2016, it has invested no less than \$300,000.00 in advanced ophthalmic laser technology;

- d. The proposed ASC is located in the county where the private office is currently located;
- e. Only one (1) ASC shall be established by the applicant; and
- f. The applicant documents that the proposed ASC shall be accredited within twelve (12) months of licensure by the American Association for Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF), Accreditation Association for Ambulatory Health Care (AAHC), American Osteopathic Association/Healthcare Facilities Accreditation Program (AOA/HFAP), The Joint Commission (TJC), or another accreditation organization approved by the United States Centers for Medicare and Medicaid Services;

Delete existing criteria 5. a. through f. in its entirety.



# CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 50<sup>th</sup> year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

## **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 "49 Ky.R." notation are regulations that were originally published in the previous year's issues of the *Administrative Register of Kentucky* but had not yet gone into effect by the end of the *Register* year.

## **KRS Index**

**J - 13**

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 - 24**

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 - 25**

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 are NOT published in the *Administrative Register of Kentucky*; however, they are usually available for a short time on the Legislative Research Commission's Web site.

## **Subject Index**

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A general index of administrative regulations published during this *Register* year, and is primarily broken down by agency.

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Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of <i>Register</i> year 50. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another Register year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior <i>Registers</i> , please visit our online <a href="#">Administrative Registers of Kentucky</a> .					
<b>SYMBOL KEY:</b>					
*	Statement of Consideration not filed by deadline		Withdrawn		6-28-2023
**	Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))		201 KAR 023:051E Replaced	49 Ky.R. 1239 1803	11-15-2022 7-5-2023
***	Withdrawn before being printed in Register		201 KAR 023:160E Replaced	50 Ky.R. 326 1487	6-28-2023 2-20-2024
IJC	Interim Joint Committee		201 KAR 036:100E Am Comments	50 Ky.R. 1649 2002	9-14-2024 3-5-2024
(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.		202 KAR 002:020E Replaced	50 Ky.R. 329 1066	7-5-2023 1-30-2024
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<b>EMERGENCY ADMINISTRATIVE REGULATIONS</b>					
NOTE: Pursuant to KRS 13A.190, emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. This index reflects the KRS Chapter 13A-established expiration dates. Other statutes or legislation may affect a regulation's actual end date.					
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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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	301 KAR 001:155	161.1221	016 KAR 002:120
	301 KAR 001:201	162.1002	907 KAR 001:479

KRS SECTION	REGULATION	KRS SECTION	REGULATION
164.0401	013 KAR 005:010	198B.040	815 KAR 007:120
	013 KAR 005:020		815 KAR 007:125
164.0402	013 KAR 005:010	198B.050	815 KAR 007:120
	013 KAR 005:020		815 KAR 007:125
164.0403	013 KAR 005:010	198B.060	815 KAR 007:120
164.0404	013 KAR 005:020		815 KAR 007:125
164.530	910 KAR 001:270	198B.080	815 KAR 007:120
164.740	011 KAR 008:030		815 KAR 007:125
164.740 – 164.785	011 KAR 005:001	198B.260	815 KAR 007:120
164.744	011 KAR 008:030		815 KAR 007:125
164.753	011 KAR 008:030	198B.650-198B.689	501 KAR 013:010
164.769	011 KAR 008:030	198B.990	815 KAR 007:120
164.772	301 KAR 002:030		815 KAR 007:125
	301 KAR 002:083	199.011	922 KAR 001:145
164.7871 – 164.7885	011 KAR 015:110		922 KAR 001:360
164.7881	011 KAR 015:040		922 KAR 001:495
164.952	105 KAR 001:390		922 KAR 001:565
176.010	603 KAR 005:155		922 KAR 002:100
176.050	603 KAR 005:155	199.011	922 KAR 001:140
177.106	603 KAR 005:155	199.462	922 KAR 001:140
177.830	603 KAR 005:155		922 KAR 001:565
177.990	603 KAR 005:155	199.464	922 KAR 001:495
186.018	922 KAR 002:100	199.470 – 199.590	922 KAR 001:565
186.020	922 KAR 002:100	199.555	922 KAR 001:140
186.412	601 KAR 012:080	199.557	922 KAR 001:140
186.4122	601 KAR 012:080	199.640 – 199.680	922 KAR 001:360
186A.017	601 KAR 023:040	199.801	922 KAR 001:140
189.125	922 KAR 002:100		922 KAR 001:360
191.881-888	922 KAR 002:165	199.894	922 KAR 002:100
194A	921 KAR 002:015	199.8943	922 KAR 002:165
194A.005	908 KAR 002:300	199.895	922 KAR 002:100
194A.705	201 KAR 020:700	199.8951	922 KAR 002:100
194.540	201 KAR 020:620	199.896	922 KAR 002:100
194.705	902 KAR 020:300	199.897	922 KAR 002:100
194A.005	902 KAR 100:040	199.898	922 KAR 002:100
	902 KAR 100:050	199.8982	922 KAR 002:100
	902 KAR 100:058	200.080 – 200.120	505 KAR 001:100
	902 KAR 100:065		505 KAR 001:110
	902 KAR 100:185		505 KAR 001:185
	902 KAR 100:195		505 KAR 001:200
	902 KAR 100:200		505 KAR 001:240
	908 KAR 002:300		505 KAR 001:250
194A.005	922 KAR 001:140		505 KAR 001:260
	922 KAR 001:495		505 KAR 001:270
	922 KAR 001:565		505 KAR 001:280
194A.025	907 KAR 015:005		505 KAR 001:290
194A.050	922 KAR 002:100		505 KAR 001:300
194A.060	907 KAR 001:044		505 KAR 001:310
	910 KAR 001:270		505 KAR 001:320
	922 KAR 005:120		505 KAR 001:330
194A.540	201 KAR 020:215		505 KAR 001:340
	201 KAR 020:225		505 KAR 001:350
	201 KAR 020:320		505 KAR 001:360
	201 KAR 036:030		505 KAR 001:370
194A.700	902 KAR 020:048		505 KAR 001:380
194A.700	902 KAR 020:036		505 KAR 001:390
194A.705	902 KAR 020:036		505 KAR 001:400
	902 KAR 020:048		505 KAR 001:410
	902 KAR 020:086		505 KAR 001:420
196.030	501 KAR 016:310	202A.011	907 KAR 001:044
196.035	501 KAR 002:060	202A.011	902 KAR 020:036
	501 KAR 003:100		921 KAR 002:015
	501 KAR 016:310	202A.051	922 KAR 005:070
196.173	501 KAR 003:060	202B.010	907 KAR 001:025
196.280	505 KAR 001:420	202B.100	922 KAR 005:070
196.070	501 KAR 016:310	205.140	922 KAR 005:120
196.180	501 KAR 045:310	205.200	921 KAR 003:020
197.020	501 KAR 002:060	205.201	910 KAR 001:170
	501 KAR 003:100	205.203	910 KAR 001:170
197.045	501 KAR 002:060	205.211	922 KAR 001:565
	505 KAR 001:420	205.245	921 KAR 002:015
198A.740 – 198A.750	202 KAR 002:020	205.455 – 205.460	910 KAR 001:170
198B.010	815 KAR 007:120	205.510	907 KAR 015:005
	815 KAR 007:125	205.520	907 KAR 001:061

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	907 KAR 001:479		902 KAR 020:048
	907 KAR 003:066		902 KAR 020:086
	907 KAR 009:010		902 KAR 020:300
	907 KAR 013:010	216.530	902 KAR 020:036
	907 KAR 013:015	216.532	902 KAR 020:036
	907 KAR 015:090		902 KAR 020:048
205.560	907 KAR 001:479		902 KAR 020:086
205.622	907 KAR 001:044		902 KAR 020:300
205.6333	907 KAR 001:479	216.535	902 KAR 020:300
205.712 – 205.795	921 KAR 001:410	216.537	902 KAR 020:048
205.720	921 KAR 001:420	216.540	902 KAR 020:048
205.750	921 KAR 001:420		902 KAR 020:300
205.755	921 KAR 001:420	216.543	902 KAR 020:300
205.795	921 KAR 001:420	216.545	902 KAR 020:300
205.2005	921 KAR 003:027	216.547	902 KAR 020:300
205.8451	907 KAR 001:044	216.555 – 216.567	902 KAR 020:036
	907 KAR 001:061	216.570 – 216.597	902 KAR 020:036
	907 KAR 015:005	216.765	902 KAR 020:036
209	922 KAR 005:070	216.765	921 KAR 002:015
	922 KAR 005:120	216.785 – 216.793	902 KAR 020:036
209.020	921 KAR 002:015	216.789	902 KAR 020:048
209.030	902 KAR 020:036		902 KAR 020:086
	902 KAR 020:048	216.793	902 KAR 020:048
	902 KAR 020:086		902 KAR 020:086
	902 KAR 020:300	216.597	902 KAR 020:036
	910 KAR 001:270	216A.080	902 KAR 020:036
209.032	902 KAR 020:036		902 KAR 020:048
	902 KAR 020:048		902 KAR 020:086
	902 KAR 020:086	216B	921 KAR 002:015
	902 KAR 020:300	216B.010	902 KAR 020:036
210	908 KAR 002:300	216B.040	902 KAR 020:036
210.366	201 KAR 036:030	216B.042	902 KAR 020:036
210.410	908 KAR 002:300	216B.045 – 216B.130	902 KAR 020:036
210.770-210.795	910 KAR 001:270	216B.450	705 KAR 004:231
211.180	902 KAR 100:185	216B.455	705 KAR 004:231
	902 KAR 100:195	216B.990	902 KAR 020:036
	902 KAR 100:200	216B.010	900 KAR 006:075
	902 KAR 004:120	216B.010 – 216B.130	900 KAR 006:020
211.185	908 KAR 002:300	216B.015	900 KAR 006:075
211.332	201 KAR 036:045		900 KAR 006:080
211.334	201 KAR 036:045		902 KAR 100:185
211.336	201 KAR 036:045	216B.020	900 KAR 006:080
211.338	201 KAR 036:045	216B.040	900 KAR 006:075
211.689	902 KAR 004:120	216B.061	900 KAR 006:080
211.842 – 11.852	902 KAR 100:019	216B.062	900 KAR 006:075
	902 KAR 100:040	216B.090	900 KAR 006:075
	902 KAR 100:050	216B.095	900 KAR 006:075
	902 KAR 100:058	216B.115	900 KAR 006:075
	902 KAR 100:065	216B.178	900 KAR 006:020
	902 KAR 100:165	216B.455	900 KAR 006:075
	902 KAR 100:185	216B.990	900 KAR 006:075
	902 KAR 100:195		900 KAR 006:080
	902 KAR 100:200	217.015	201 KAR 002:225
211.990	902 KAR 100:019		902 KAR 045:190E
	902 KAR 100:040	217.015	301 KAR 001:155
	902 KAR 100:050	217.025	902 KAR 045:190E
	902 KAR 100:058	217.035	902 KAR 045:190E
	902 KAR 100:065	217.037	902 KAR 045:190E
	902 KAR 100:165	217.0	902 KAR 045:190E
	902 KAR 100:185	217.055	201 KAR 002:076
	902 KAR 100:195	217.065	201 KAR 002:076
	902 KAR 100:200	217.177	201 KAR 016:550
212.132	105 KAR 001:148	217.215	201 KAR 002:165
214.010	922 KAR 002:100	217.280-217.390	501 KAR 003:100
214.036	922 KAR 002:100		501 KAR 013:010
216.380	907 KAR 001:065	218	915 KAR 001:100
216.510	201 KAR 020:700	218A.205	201 KAR 002:020
216.2920	900 KAR 007:030		201 KAR 002:050
	900 KAR 007:040		201 KAR 020:056
216.2925	900 KAR 007:030	218A.010	201 KAR 005:005
216.2927	900 KAR 007:030	218A.170	201 KAR 020:065
	900 KAR 007:040	218A.171 – 218A.172	201 KAR 020:065
216.2929	900 KAR 007:040	218A.202	201 KAR 020:057
216.510 – 216.525	902 KAR 020:036		201 KAR 020:057





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230	201 KAR 027:016	260.020	302 KAR 045:020
	809 KAR 001:002	260.030	302 KAR 045:020
	809 KAR 010:001	260.850	902 KAR 045:190E
	809 KAR 010:002	273	922 KAR 001:580
	809 KAR 010:002	273.2	921 KAR 003:095
	809 KAR 010:003	273.10	921 KAR 003:095
	809 KAR 010:003	278	807 KAR 005:078
	809 KAR 010:004	278.700-716	401 KAR 103:005
	809 KAR 010:004		401 KAR 103:010
	809 KAR 010:005		401 KAR 103:020
	809 KAR 010:006		401 KAR 103:030
	809 KAR 010:006	281.010	907 KAR 003:066
	809 KAR 010:007	281.605	907 KAR 003:066
	809 KAR 010:008	281.635	907 KAR 003:066
230.210	810 KAR 004:001	281.872	907 KAR 003:066
230.215	810 KAR 002:020	281.875	907 KAR 003:066
	810 KAR 002:070	292.330	808 KAR 010:501
	810 KAR 003:010	292.410	808 KAR 010:501
	810 KAR 004:010	292.411	808 KAR 010:501
	810 KAR 004:030	292.412	808 KAR 010:501
	810 KAR 004:040	301	201 KAR 016:550
	810 KAR 004:070	302.32	921 KAR 001:420
	810 KAR 007:040	302.38	921 KAR 001:420
230.240	810 KAR 002:020	302.51 – 302.54	921 KAR 001:420
	810 KAR 004:030	303.72	921 KAR 001:420
230.260	810 KAR 002:020	304.1-050	806 KAR 017:290
	810 KAR 002:070		806 KAR 017:590
	810 KAR 002:100	304.2-100	806 KAR 017:290
	810 KAR 003:010	304.2-230	806 KAR 017:290
	810 KAR 004:030	304.2-310	806 KAR 017:290
	810 KAR 004:040	304.39-110	915 KAR 001:080
	810 KAR 004:070	304.9-020	806 KAR 009:400
	810 KAR 007:040		806 KAR 017:590
230.280	810 KAR 003:010	304.9-055	806 KAR 017:590
230.290	810 KAR 003:010	304.9-430	806 KAR 009:400
	810 KAR 004:030	304.9-433	806 KAR 009:400
230.300	810 KAR 003:010	304.9-435	806 KAR 009:400
230.310	810 KAR 004:030	304.9-440	806 KAR 009:400
230.320	810 KAR 004:030	304.14-135	900 KAR 007:030
230.770	810 KAR 007:040	304.17A-005	806 KAR 017:290
230.802	810 KAR 007:040	304.17A-1631	806 KAR 017:290
230.811	810 KAR 003:010	304.17A-168	806 KAR 017:290
230.817	810 KAR 003:010	304.17A-505	806 KAR 017:290
237.110	301 KAR 002:172	304.17A-535	806 KAR 017:290
	921 KAR 001:410	304.17A-600	806 KAR 017:290
246.030	302 KAR 022:150	304.17A-607	806 KAR 017:290
	302 KAR 045:020	304.17A-617	806 KAR 017:290
246.650	302 KAR 045:020	304.17A-621 – 304.17A-631	806 KAR 017:290
246.660	302 KAR 045:020	304.17A-732	806 KAR 017:590
246.990	302 KAR 045:020		907 KAR 015:005
247.232	302 KAR 016:020	304.40-075	201 KAR 008:533
	302 KAR 016:030	309.080	908 KAR 002:300
247.233	302 KAR 016:072	309.130	907 KAR 015:005
	302 KAR 016:111		908 KAR 002:300
247.234	301 KAR 001:410	309.460	907 KAR 003:310
	302 KAR 016:020	309.462	907 KAR 003:310
	302 KAR 016:030	309.464	907 KAR 003:310
	302 KAR 016:050	310.021	902 KAR 020:036
247.236	302 KAR 016:020		902 KAR 020:048
	302 KAR 016:030	310.031	902 KAR 020:036
251.355	302 KAR 033:010		902 KAR 020:048
251.375	302 KAR 033:010		902 KAR 020:086
251.380	302 KAR 033:010	311	201 KAR 027:008
251.470	302 KAR 033:010	311.571	908 KAR 002:300
251.990	302 KAR 033:010	311.592	201 KAR 009:067
257.020	302 KAR 022:150	311.646	922 KAR 002:100
257.030	302 KAR 022:150	311.840	907 KAR 015:005
257.080	201 KAR 016:701	311.840 – 311.862	908 KAR 002:300
	302 KAR 022:150	311A.025	202 KAR 007:410
257.160	201 KAR 016:560	311A.030	202 KAR 007:550
257.990	302 KAR 022:150		202 KAR 007:555
258	201 KAR 016:550	311A.050 – 311A.100	202 KAR 007:410
258.043	201 KAR 016:701	311A.120 – 311A.135	202 KAR 007:410
258.065	201 KAR 016:701	311A.142	202 KAR 007:410

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311A.145	202 KAR 007:030		201 KAR 002:340
311A.170	202 KAR 007:410	315.020	201 KAR 002:040
311A.180	202 KAR 007:550		201 KAR 002:076
311A.185	202 KAR 007:410		201 KAR 002:205
311A.190	202 KAR 007:410		201 KAR 002:225
	202 KAR 007:550		201 KAR 002:320
	202 KAR 007:555		201 KAR 002:340
311.595	201 KAR 009:067	315.035	201 KAR 002:050
311.599	201 KAR 009:067		201 KAR 002:076
311.720	922 KAR 001:495		201 KAR 002:225
311.840	922 KAR 001:495		201 KAR 002:240
313.010(9)	201 KAR 008:533		201 KAR 002:340
313.030	201 KAR 008:533		201 KAR 002:050
313.254	201 KAR 005:533		902 KAR 020:048
314.011	201 KAR 020:056		902 KAR 020:086
	201 KAR 020:057	315.036	201 KAR 002:320
	201 KAR 020:065	315.0351	201 KAR 002:050
	201 KAR 020:067		201 KAR 002:076
	201 KAR 020:215		201 KAR 002:205
	201 KAR 020:220	315.036	201 KAR 002:050
	201 KAR 020:320	315.040	201 KAR 002:220
	902 KAR 020:036	315.050	201 KAR 002:020
	907 KAR 015:005		201 KAR 002:040
	922 KAR 002:100		201 KAR 002:050
	922 KAR 001:495	315.060	201 KAR 002:050
314.021	201 KAR 020:320	315.110	201 KAR 002:050
314.041	201 KAR 020:225	315.120	201 KAR 002:050
	201 KAR 020:320	315.121	201 KAR 002:105
	201 KAR 020:370		201 KAR 002:220
314.042	908 KAR 002:300	315.191	105 KAR 001:457
	201 KAR 020:057		201 KAR 002:040
	201 KAR 020:065		201 KAR 002:050
	201 KAR 020:067		201 KAR 002:076
	201 KAR 020:215		201 KAR 002:205
	201 KAR 020:225		201 KAR 002:220
	201 KAR 020:370		201 KAR 002:225
314.051	201 KAR 020:225		201 KAR 002:320
	201 KAR 020:370		201 KAR 002:340
314.071	201 KAR 020:225		201 KAR 002:390
	201 KAR 020:370	315.300	201 KAR 002:205
314.073	201 KAR 020:215	315.335	201 KAR 002:205
	201 KAR 020:220	315.350	201 KAR 002:105
	201 KAR 020:225	315.400	201 KAR 002:105
314.075	201 KAR 020:225		201 KAR 002:320
314.085	201 KAR 020:067		201 KAR 002:390
	201 KAR 020:225	315.402	201 KAR 002:050
314.089	201 KAR 020:067		201 KAR 002:105
314.091	201 KAR 020:056	315.404	201 KAR 002:105
	201 KAR 020:057		201 KAR 002:320
	201 KAR 020:091	315.406	201 KAR 002:105
	201 KAR 020:225	315.408	201 KAR 002:105
	201 KAR 020:370	315.410	201 KAR 002:105
314.103	201 KAR 020:056	315.4102	201 KAR 002:390
	201 KAR 020:225	315.4104	201 KAR 002:390
	201 KAR 020:370	315.4106	201 KAR 002:390
314.109	201 KAR 020:056	315.4108	201 KAR 002:390
	201 KAR 020:225	315.4110	201 KAR 002:390
314.111	201 KAR 020:320	315.412	201 KAR 002:105
	201 KAR 020:360	319.050	908 KAR 002:300
314.131	201 KAR 020:220	319.053	907 KAR 015:005
	201 KAR 020:320	319.056	907 KAR 015:005
314.161	201 KAR 020:056		908 KAR 002:300
314.175	201 KAR 020:056	319.064	907 KAR 015:005
314.193	201 KAR 020:057		908 KAR 002:300
314.195	201 KAR 020:057	319C.010	907 KAR 015:005
314.400 – 314.414	201 KAR 020:620		908 KAR 002:300
314.475	201 KAR 020:370	320	809 KAR 010:001
	201 KAR 020:506	320.220	201 KAR 005:005
314.991	201 KAR 020:215	320.250	201 KAR 005:005
315.010	201 KAR 002:040	320.270	201 KAR 005:005
	201 KAR 002:105	321	302 KAR 022:150
	201 KAR 002:220	321.175	201 KAR 016:701
	201 KAR 002:225		201 KAR 016:702
	201 KAR 002:320		201 KAR 016:750

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321.181	201 KAR 016:701	335.300	907 KAR 015:005
	201 KAR 016:552		908 KAR 002:300
321.185	201 KAR 016:701	335.500	907 KAR 015:005
321.187	201 KAR 016:701		908 KAR 002:300
321.188	201 KAR 016:701		201 KAR 036:005
321.190	201 KAR 016:510		201 KAR 036:060
	201 KAR 016:512		201 KAR 036:065
	201 KAR 016:501		201 KAR 036:070
	201 KAR 016:051	335.500 – 335.599	201 KAR 036:030
	201 KAR 016:702	335.505	201 KAR 036:045
	201 KAR 016:750		201 KAR 036:060
321.193	201 KAR 016:702		201 KAR 036:065
	201 KAR 016:510	335.515	201 KAR 036:072
321.200	201 KAR 016:701		201 KAR 036:090
	201 KAR 016:514	335.525	201 KAR 036:060
321.201	201 KAR 016:510		201 KAR 036:065
321.211	201 KAR 016:510		201 KAR 036:070
	201 KAR 016:510	335.527	201 KAR 036:070
321.207	201 KAR 016:514	335.535	201 KAR 036:005
	201 KAR 016:550		201 KAR 036:072
	201 KAR 016:552		201 KAR 036:075
321.208	201 KAR 016:514	335.540	201 KAR 036:535
321.235	201 KAR 016:512		201 KAR 036:040
	201 KAR 016:516	335.545	201 KAR 036:050
	201 KAR 016:552		201 KAR 036:050
	201 KAR 016:510		201 KAR 036:090
	201 KAR 016:514	335.560	201 KAR 036:100
321.351	201 KAR 016:550	339.500-335.599	739 KAR 002:160
	201 KAR 016:552	342.640	902 KAR 020:500
	201 KAR 016:560	344.010	104 KAR 001:080
321.441	201 KAR 016:702	344.010 – 344.500	104 KAR 001:050
	201 KAR 016:750	344.030	101 KAR 001:365
	201 KAR 016:512	344.040	104 KAR 001:040
321.442	201 KAR 016:512	344.050	104 KAR 001:040
321.443	201 KAR 016:702		104 KAR 001:100
	201 KAR 016:750	344.060	104 KAR 001:040
323A.040	201 KAR 010:040		104 KAR 001:100
	201 KAR 010:050	344.070	104 KAR 001:040
323A.050	201 KAR 010:040	344.120	104 KAR 001:100
	201 KAR 010:050	344.130	104 KAR 001:100
323A.060	201 KAR 010:040	344.190	104 KAR 001:010
	201 KAR 010:050	344.360 – 344.385	104 KAR 001:080
323A.070	201 KAR 010:040	344.500	104 KAR 001:100
	201 KAR 010:050	344.600 – 344.680	104 KAR 001:080
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325.270	201 KAR 001:190		905 KAR 045:070
327.040	201 KAR 022:053	387.025	922 KAR 001:140
327.070	201 KAR 022:053	387.540	922 KAR 005:070
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335.080	201 KAR 023:160	431	907 KAR 001:044
	907 KAR 015:005	431.17	907 KAR 001:044
	908 KAR 002:300	431.52	907 KAR 001:044
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440.70	907 KAR 001:479	605.100	922 KAR 001:145
440.230	907 KAR 001:479	605.110	505 KAR 001:260
441.005	501 KAR 003:010	605.120	922 KAR 001:565
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	501 KAR 007:080		922 KAR 001:360
	501 KAR 007:090		922 KAR 002:100
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	501 KAR 003:060	620.030	902 KAR 020:086
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	501 KAR 007:010	620.090	922 KAR 001:140
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	401 KAR 042:250		922 KAR 002:100
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	907 KAR 001:025	42 U.S.C.	601 KAR 012:080
	907 KAR 001:044	42 U.S.C.	922 KAR 005:120
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	907 KAR 001:479	42 U.S.C.	907 KAR 015:090
	907 KAR 003:066	42 U.S.C.	907 KAR 015:090
45 C.F.R.	907 KAR 015:005	42 U.S.C.	922 KAR 005:120
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49 C.F.R.	922 KAR 002:100	Ky Acts ch. 78 (2023)	902 KAR 045:190E
50 C.F.R.	302 KAR 045:020	Ky Acts ch. 172	030 KAR 010:010
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7 U.S.C.	921 KAR 003:020		030 KAR 010:030
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	921 KAR 003:027		030 KAR 010:050
9 U.S.C.	202 KAR 006:090		030 KAR 010:060
10 U.S.C.	106 KAR 004:020		030 KAR 010:070
15 U.S.C.	201 KAR 027:008		030 KAR 010:080
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16 U.S.C.	401 KAR 045:030		030 KAR 010:110
20 U.S.C.	016 KAR 004:020		030 KAR 010:120
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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
002 KAR 002:010	06-27-2023	Remain in Effect without Amendment
002 KAR 002:020	06-27-2023	Remain in Effect without Amendment
002 KAR 002:040	06-27-2023	Remain in Effect without Amendment
002 KAR 002:050	06-27-2023	Remain in Effect without Amendment
002 KAR 002:060	06-27-2023	Remain in Effect without Amendment
002 KAR 002:070	06-27-2023	Remain in Effect without Amendment
009 KAR 001:060	03-18-2024	Remain in Effect without Amendment
013 KAR 002:060	11-20-2023	Remain in Effect without Amendment
016 KAR 007:010	03-01-2024	Remain in Effect without Amendment
030 KAR 007:020	02-27-2024	Remain in Effect without Amendment
103 KAR 008:160	11-13-2023	Remain in Effect without Amendment
106 KAR 001:131	12-01-2023	Shall be Amended; Filing deadline 06-01-2025
200 KAR 005:355	12-18-2023	Remain in Effect without Amendment
201 KAR 002:045	11-06-2023	To be amended, filing deadline 05-06-2025
201 KAR 020:520	07-17-2023	Remain in Effect without Amendment
201 KAR 023:055	09-06-2023	To be amended, Am filed 6-28-2023
201 KAR 036:020	12-20-2023	Remain in Effect without Amendment
201 KAR 036:055	12-21-2023	Remain in Effect without Amendment
201 KAR 039:001	03-07-2024	Shall be Amended; Filing deadline 9-7-2025
201 KAR 039:030	03-07-2024	Shall be Amended; Filing deadline 9-7-2025
201 KAR 039:050	03-07-2024	Shall be Amended; Filing deadline 9-7-2025
201 KAR 039:070	03-07-2024	Shall be Amended, Filing deadline 9-7-2025
201 KAR 043:110	10-07-2023	Remain in Effect without Amendment
201 KAR 046:090	11-08-2023	Remain in Effect without Amendment
201 KAR 047:020	12-20-2023	Remain in Effect without Amendment
202 KAR 007:810	03-20-2024	Remain in Effect without Amendment
301 KAR 002:122	07-14-2023	To be amended, filing deadline 1-4-25
301 KAR 003:015	03-20-2024	To be amended, filing deadline 9-2-2025
301 KAR 005:040	08-03-2023	To be amended, filing deadline 2-3-2025
302 KAR 017:010	01-22-2024	Remain in Effect without Amendment
302 KAR 039:020	01-22-2024	Remain in Effect without Amendment
705 KAR 004:231	10-11-2023	To be amended, Am filed 10-11-2023
780 KAR 007:060	08-07-2023	Remain in Effect without Amendment
803 KAR 002:307	08-31-2023	Remain in Effect without Amendment
803 KAR 002:318	08-31-2023	Remain in Effect without Amendment
803 KAR 002:412	01-05-2024	Remain in Effect without Amendment
803 KAR 002:421	08-31-2023	Remain in Effect without Amendment
806 KAR 018:020	06-13-2023	Remain in Effect without Amendment
902 KAR 002:060	08-10-2023	Remain in Effect without Amendment
902 KAR 010:085	08-10-2023	Remain in Effect without Amendment
902 KAR 020:091	02-19-2024	Remain in Effect without Amendment
902 KAR 021:030	08-10-2023	Remain in Effect without Amendment
902 KAR 100:080	06-12-2023	Remain in Effect without Amendment
902 KAR 100:085	06-12-2023	Remain in Effect without Amendment
921 KAR 001:001	01-16-2024	Remain in Effect without Amendment
921 KAR 001:410	10-11-2023	To be amended, Am filed 10-9-2023
921 KAR 001:420	10-11-2023	To be amended, Am 8-14-2023
921 KAR 002:040	01-16-2024	Remain in Effect without Amendment
922 KA R005:120	03-11-2024	To be amended, Am filed 12-8-2023
922 KAR 002:020	06-19-2023	To be amended, filing deadline 12-19-2024

## TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 50<sup>th</sup> 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. To view regulations on the Legislative Research Commission Web site, go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).  
 † - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
201 KAR 020:360	11-21-2023		
201 KAR 020:390	11-21-2023		
201 KAR 020:411	11-21-2023		
201 KAR 020:472	11-21-2023		
201 KAR 020:476	11-21-2023		
201 KAR 020:490	11-21-2023		
201 KAR 020:506	11-21-2023		
201 KAR 020:600	11-21-2023		
201 KAR 020:620	11-21-2023		
201 KAR 020:660	11-21-2023		
201 KAR 020:670	11-21-2023		
703 KAR 005:240	07-20-2023		
705 KAR 004:041	08-23-2023		
806 KAR 009:025	08-11-2023		
806 KAR 012:140	06-20-2023		
900 KAR 006:125	08-29-2023		

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